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CURRENT EVENTS.

LAWYERS IN THE ENGLISH GOVERNMENT.—Several of the important offices in Mr. Gladstone's new government have again fallen to lawyers. Mr. John Morley, the chief secretary for Ireland, was called to the bar two years after Sir Farrer Herschell, who takes his seat on the woolsack. Mr. Morley is a gentleman of conspicuous ability, and of broad and liberal views, from whom very much is expected in the direction of the pacification of Ireland. Mr. Ronald Morley, the new "whip," has been at the bar for twelve years. Sir William Vernon Harcourt, an eminent lawyer, becomes chancellor of the exchecquer. It was for a time supposed that he would become lord chancellor.

"NONSENSE OF REASON." — The case of *Lamb v. Ryan*, printed in a former issue,[1] illustrates what Gœthe, in his celebrated passage upon legal heredity, calls "the nonsense of reason." A person brings an action in one court of his State, which we will call for convenience Court A., and then is obliged to go to another court of the same State, which we will call Court B., to obtain an order restraining the defendants in the action in Court A. from pleading the statute of limitations. Why not cut the matter short, and say that any equities which would entitle the plaintiff to an injunction at the hands of Court B., restraining the defendants in the action in Court A. from setting up the statute of limitations as a defense, would be a good replication to a plea of the statute in Court A.? Could anything afford a stronger illustration of the rank nonsense of keeping up in an American community two kinds of courts and two kinds of law, even after the incongruity has been abolished in the country in which it had its origin?

[1] 22 C. L. J. 154.

MORE "NONSENSE OF REASON."—The decision of Mr. Justice Butt in the case of *Crawford* v. *Crawford and Dilke* presents another case of the "nonsense of reason" which Gœthe ascribed to the law. London is still shaking its ribs over it. The substance of the decision is the woman was guilty and that the man was not. The suit was an action such as is allowed by the English law, brought by the husband against his wife for a divorce upon the charge of adultery, joining her co-adulterer as a co-defendant in the case, and seeking a recovery of damages against him. The only evidence in the case was that of the plaintiff himself, who testified that his wife had confessed to him that she had committed adulteries with the other defendant, Sir Charles Dilke, and who detailed the facts attending the adulteries in a circumstantial manner, showing a degree of bestiality which is scarcely conceivable. At the conclusion of this evidence the counsel for the plaintiff submitted the evidence as evidence against Mrs. Crawford, but not as against Sir Charles Dilke. The learned judge had no doubt whatever as to the truth of the confession, was compelled to come to the conclusion that the adultery was committed and that the plaintiff was entitled to the decree for which he prayed. "But," said he, "with regard to Sir Charles Dilke, my decision is that there is no evidence worthy of the name as against him. It would be unjust if any gentleman in the position in which he finds himself in this court should be assailed and condemned on charges of this nature, on the statement of a person not upon oath, and the truth of whose story he has no opportunity of testing by cross-examination. In common fairness these admissions, as they stand, ought not for one moment to be weighed against Sir Charles Dilke." This naturally puzzles the lay mind, which is unable to understand how, as between co-adulterers, the woman can be guilty and the man innocent. The truth nevertheless is, that in acquitting Sir Charles Dilke the judge acted in strict accordance with the law. The sworn confession of a person who had not seen fit to appear in court and take the witness stand, accusing him of adultery with her, although it might be very persuasive evidence of his guilt from a club-

house standpoint, was not such evidence as is admissible in a court of justice. Aside from its being a confession made to her husband, she was not under oath, did not incur any of the penalties of perjury in case the confession were false, and Sir Charles did not have an opportunity of cross-examining her concerning it. It is unnessary to enlarge upon so plain a proposition; for every law student knows that such evidence is never admissible in a court of justice for any purpose, except for the purpose of charging the party making the confession. But we do not understand upon what principle a confession made by a wife to her husband, in the confidence of the marital relation, could be allowed to be detailed in a court of justice, in a suit by the husband against the wife, for the purpose of destroying the wife. Such evidence has never been admissible for any purpose according to the principles of the common law, and those principles are founded upon the highest grounds of public policy. Such a confession might be the result of marital coercion; a weak-minded or hysterical wife, accused of adultery by a jealous husband, might easily make it; no doubt wives have often made such confessions when they were not guilty. Every one experienced in the administration of criminal justice knows how common it is for persons to accuse themselves of crimes which they never committed. Nothing is more unsafe than to convict a person on his own confession unsupported by corroborating evidence; and where the confession comes from a husband, as having been made to him by his wife in the confidence with which the law surrounds the marital relation, the hearing of it in a court of justice is infamous.

JUDICIAL NEPOTISM.—The Cincinnati *Law Bulletin* says: "A bill has been passed in the United States Senate to prevent judges from appointing to office any of their relatives within the degree of first cousin. The Senate could have passed a better bill, for instance one raising the salaries of Federal judges." It is not perceived why a law of this kind should be confined to the judges. Presidents, governors, and others having the appointing power have constantly been guilty of the same offence. Senators, within the last year, have used their influence to get their incompetent relatives into office in the place of experienced and competent public servants. We believe, if the matter were thoroughly investigated, it would turn out that there is hardly a member of the Senate that has not been guilty, directly or indirectly, of this offence. No doubt the Federal judges have been guilty of it as often as men in political life who exercise the appointing power. But the reason is, that those judges, in consequence of the meanness of Congress, including the Senate, are obliged to live at starvation salaries, while they have none of the "outside" opportunities to make money which senators enjoy. They cannot practice in other tribunals, as senators do in the Federal courts, taking bribes in the shape of fees. Nor can they, without degrading their office, take presents of large blocks of stock in projected companies whose future value depends upon favorable legislation or favorable judicial decisions; but senators can line their pockets with Credit Mobilier and Pan Electric gift-stock, and afterwards sit in cabinets and even hold the presidential office. For *such* a body to pass a bill which casts a reflection of this kind exclusively upon the Judiciary is really too much.

NOTES OF RECENT DECISIONS.

APPELLATE PROCEDURE. [RESTITUTION.] RESTITUTION OF PROPERTY SOLD AT EXECUTION UNDER A JUDGMENT WHICH IS SUBSEQUENTLY REVERSED OR MODIFIED.—In Nevada there is a statute providing as follows: "When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order."[2] In Martin v. Victor, &c., Co.,[3] this statute is restricted by interpretration so as to mean that it is only in cases where the judgment is reversed, or so far modified as to make it inequitable to allow the sale to stand, that a court would be authorized to set aside an execution sale. When, therefore, the defendant appealed

[2] Nev. Civil Pr. Act, § 339.
[3] 9 Pac. Repr. 336; s. c. 9 West Coast Repr. 108.

from a judgment against him, but gave no bond to stay execution, and, on his appeal, succeeded merely in abating the judgment to the extent of $70, and his property in the meantime was sold at execution sale under the judgment, it was held that he was not entitled to an order of restitution. Hawley, J., in giving the opinion of the court, said: "The title acquired by the purchaser of real estate, under and by virtue of a writ of execution issued upon a judgment rendered by a court of competent jurisdiction, is not rendered invalid by a subsequent reversal of the judgment in the appellate court. The only controversy upon this question is whether or not the principle applies to the parties to the suit; several authorities holding that it does apply to all cases, whether the purchaser was a party to the suit or not.[4] Others declare that it does not apply when a party to the suit is a purchaser at the sale.[5] In California the rule is stated as follows: 'The doctrine formerly prevailed that whenever a sale was made under an erroneous decree or judgment, which was afterwards reversed, the court rendering the judgment having jurisdiction of the person and subject-matter, the purchaser acquired a good title, notwithstanding the reversal. It was enough, it was said, for the buyer to know that the court had jurisdiction, and exercised it; and that the judgment, on the faith of which he purchased, was made, and authorized the sale. With the errors of the court he had no concern. The former owner was then turned over to an action for damages to make good the loss of his property. That doctrine is now so far modified that, if the plaintiff in the judgment be himself the purchaser, the former owner, after reversal, may, at his election, either have the sale set aside and be restored to the possession, or have his action for damages.'[6] The judgment in this case was not reversed. A mistake was made in the computation of time that plaintiff was entitled to wages. This mistake was rectified in the appellate court by deducting the sum of $70 from the judgment. This was the only modification made. The judgment was, in all other respects, affirmed. It is only in cases where the judgment is reversed, or so far modified as to make it inequitable to allow the sale to stand, that a court would be authorized, under the statute, to set the sale aside. This is not such a case. Appellant will be restored to all rights to which it is entitled, by collecting from respondent the sum of $70. This amount can be deducted by respondent from his costs on appeal. Upon the filing of the *remittitur* in the court below, the district court will make the proper order to that effect."

[4] South Fork Canal Co. v. Gordon, 2 Abb. (U. S.) 486; Gray v. Brignardello, 1 Wall. 634; Rorer, Jud. Sales, § 138.

[5] Galpin v. Page, 18 Wall. 374; Fergus v. Woodworth, 44 Ill. 381; Gott v. Powell, 41 Mo. 420; Corwith v. State Bank, 15 Wis. 291; Freem. Ex'ns, § 347.

[6] Reynolds v. Hosmer, 45 Cal. 628; Reynolds v Harris, 14 Cal. 679; Johnson v. Lamping, 34 Cal. 301.

EQUITY [CANCELLATION.] CANCELLATION OF FORGED INSTRUMENTS.—The case of *Sharon v. Hill*,[7] is an exceedingly valuable contribution to the law on the subject of the cancellation of forged instruments, and the evidence which is available to detect forgeries. The report is embellished with many lithographic plates of the exhibits which were used in evidence. The facts were that in the fall of 1883 the defendant made a claim to be the wife of the plaintiff by virtue of an alleged secret declaration of marriage, purporting to have been signed by the parties on August 25, 1880, and a subsequent residence in a hotel belonging to the plaintiff and adjoining another in which he lived, from the latter part of September of the same year to the early part of December, 1881, and the receipt during this time of five hundred dollars a month from the plaintiff, after which, being expelled from her hotel by him, she lived about in San Francisco, and always went by her maiden name and passed for an unmarried woman. On October 3, 1883, the plaintiff brought this suit to cancel and annul the alleged declaration as being false and forged, whereupon the defendant exhibited sundry letters purporting to be written to her by the plaintiff while she resided at his hotel, and addressed, "My Dear Wife." The court hold, on the testimony of the parties, the experts, and the face of the alleged declaration and letters, that they are false and forged—the former having been written by the defendant over a simulated signature of

[7] 9 West Coast Repr. 1.

the plaintiff, and the latter being a tracing made by her of a letter in ink written by the plaintiff, substituting in the process the word "Wife" in the address for "Miss Hill" or "Allie," and such substitution simply in the address of others written by him in pencil; and also that the contemporaneous conduct of the parties, and particularly that of the defendant, was altogether incompatible with the claim of marriage or the existence of any such declaration or letters, and therefore the same are false and forged. The opinion is a long one, but very interesting throughout. It was written by Mr. District Judge Deady, and everywhere displays the patient care which characterizes the opinions of that most excellent judge. Mr. Circuit Judge Sawyer concurred.

NAMES OF PERSONS.

I.

Definition.—A name, as applied to a person, has been judicially defined as "a discriminative appellation or designation of an individual."[1]

Roman Names.—Much irregularity existed under the Romans in the giving of names, or the naming of individuals; and this is especially true under the Empire, when names were frequently changed to suit the fancy of the person named. The nicknames of individuals are often better known to us than their actual names. Thus we have an illustration in Caesars' name. Caius is his truly Roman name; Julius is his gentile name (of the Julian clan or house;) and Caesar is a kind of hereditary nickname by which he was then known.[2]

Early Names—The early English names were often descriptive of the person or his character. Such was the case also with the Saxons as "Ethelwulf," "Noble Wolf." Usually our very early ancestors, unless quite distinguished, had but one name, and that name was seldom the gentile or family name. Often to the name by which they were known was added a name descriptive of the person, as Long, White, Black, etc. Subsequently (probably) the occupation of the person was added, as John, the Carpenter, now John Carpenter. So also patronymics were used, as Johnson, a son of John; Robertson, a son of Robert, copied from the early Greek writings and methods. "The noble land owner was called 'of' such and such a place (the German *von* and French *de*) while the humbler man was called not 'of' but 'at' such a place, as in the name 'Attewell,' or merely by the local name without the particle."[3]

Christian and Surname.—Both the Christion and Surnames[4] are proper names; the former now bestowed by the parents, usually at the child's baptism; and hence, the appellation Christian as applied to it.[5] Practice has made it legitimate for a person, when of full age, if he has not been baptized, to take a new Christian or baptismal name; and when so taken he is liable in court under either name, at least so long as he is known by his earlier name.[6] The surname is that name which is added to the Christian name; and in modern times these have become family names.[7] It is so called because originally it was written *over the name* in judicial writings and contracts. In fact they were and still are used to distinguish persons of the same name. Thus if the Christian name of two persons was John, the name (surname) Black was added to one and Carpenter to the other, and they were respectively known as John Black and John Carpenter. In modern times a child born in wedlock takes the surname of its father; and until some name is bestowed

[1] People v. Ferguson, 8 Cow. 102, 116. See Bouvier Dict., Name; Rapalje and Lawrence's Dict., Name.

[2] Encyclopædia Britanica, Name.

[3] Id. As Charles Carroll of Carrollton.

[4] Sometimes written Sirname, approaching Sirename.

[5] Those acquainted with the Swedes in this country must have noticed how the order of names, as we practice naming, is changed by them in naming their off-spring.

[6] See the case of Walden v. Holman, 6 Mod. 115; S. C. Holman v. Walden 1 Salk. 6. An old case 2 Bro. C. C. 170, holds that a man can have only one Christian name at a time, but practice has in fact overthown this case. There is no more reason for allowing a man to be known by two surnames than by two Christian names. See the old authorities, Co. Litt. 3 *a*; R. v. Newman, 1 Ld. Raym. 562.

[7] The present Christain name corresponds to the Roman Praenomen. Thus in the names of Marcus Tullius Cicero, Marcus was the Praenomen; Tullis, the Nomen, in which every free born Roman citizen prided himself; and Cicero the Cognomen or Agnomen. The Nomen distinguished one gens from another, the Cognomen (or Agnomen) one familia from another, and the Praenomen one member of the familia from another.

upon it this is its only name.[8] Unless some statute prohibits it a man may take upon himself whatever surname or as many surnames as he pleases without the aid of a statute.[9]

Right to Name Child.—The father, even to the exclusion of its mother, has the right to bestow a name upon his child, at least so long as it is a minor and has not been emancipated by him. "The right to give his child a name was one which the father possessed, and one which he could not be deprived of against his consent. If the intestate chose to bargain for the exercise of his right, he should be bound, for by his bargain he limited and restrained the father's right to bestow his own or some other name upon the child. We can perceive no solid reason for declaring that the right with which the father parted at the testator's request was of no value. It is difficult, if not impossible, to invent even a plausible reason for affirming that such a right or privilege is absolutely worthless. The father is the natural guardian of his child, and entitled to its services during infancy, and within this natural right must fall the privilege of bestowing a name upon it. In yielding to the intestator's request, and in consideration of the promise accompanying it, the appellant certainly suffered some deprivation and surrendered some right." Consequently a note for ten thousand dollars given for the privilege of naming the payee's child was held valid, and to be supported by a sufficient consideration.[10] If the father die before the child is named, the right devolves upon the mother.

Guardian's Right to Name.—If the child is without a name, no doubt the guardian of its person, duly appointed by court, would have the right to bestow one upon it, the father and mother both being dead and not having given it one.

Bastard.—A bastard usually by custom in this country, takes the surname of its mother as her name was at its birth; and she has the exclusive right to give it a name;[11] but frequently the child acquires another name by reputation, (sometimes the name of the reputed father) and by such name may take as a devisee as we shall hereafter see. In England a bastard has no right either to its reputive father's nor its mother's name.[12]

Change of Names.—It has already been stated that a man may change his surname as often as he pleases without the aid of a statute; and there is no reason why he may not change his Christian name also. Such changes are frequently made; and other names added without any change in the old name. The legislature of a State has the power to change the name of an individual, with his consent at least; and it is a common practice to grant favors of this kind on petition. In many States provisions are made giving courts of general jurisdiction power to change a name on petition of the individual to be effected by it.[13]

Married and Divorced Women.—It is a custom familiar to all that a women, at her marriage, loses her own surname and takes that of her husband. If, however, the marriage is void, in principle, her name is not changed; for her legal status it is no way changed by a void marriage.[14] A divorce does not give back her maiden name but leaves her with her husband's surname.[15] In many States courts are empowered by statute to change the wife's name, with her consent, back to her maiden name; and in other States that power is held to be inherent in the court granting the divorce.[16] So long, at least, as there is no permanent separation of husband and wife, she cannot acquire a surname different from his; but there is no reason why she may not be known by a different Christian name, other

[8] 4 Co. 170. See Britton v. Wrightman, Poph. 56.

[9] 1 Ld. Rayn. 305.

[10] R. v. Inhabitants, etc., 3 Maul. and Selw. 250; Doe v. Yates, 5 B. and Ad. 544; In Re Snook, 2 Hill 566.

[11] Walford v. Powers, Admrx. 85 Ind. 294. See also Parks v. Francis, Admr. 50 Vt. 626; s. c. 28 Am. Rep. 157.

[12] See Co. Litt. 36; 1 Moody C. C. 402. This is upon the theory that the mother being the natural guardian of the child has the same right that a father has because of his being the natural guardian of his child. This is the doctrine set forth in the quotation made above where it is said that "The father is the natural guardian of his child * * and within this natural right must fall the privilege of bestowing a name upon it." Walford v. Powers, *supra*. That the mother is the natural guardian, see King v. Soper, 5 T. R. 278; *Ex parte* Knee, 4 Bos. and Pul. 148; People v. Londt, 2 Johns. 375; Wright v. Wright, 2 Mass. 109.

[13] 2 Stephen Com. 297; Rex. v. Clark, R. & R. 358; Rex v. Smith, 1 C. & P. 151; s. c. 1 Moody 402; Reg. v. Evans, 8 C. & P. 765.

[14] Considerable strictness is required in New York in setting forth certain facts requisite to obtain the change. *Re* Hamilton, 10 Abb. N. Cas. 79. See Indiana Rev. Stat. 1881 §§ 1000-1004. See Leigh v. Leigh, 15 Ves. 100

[15] 2 Bish. Mar. & Div. § 704 *a*.

[16] Fendall v. Goldsmith, 2 P. D. 263.

than her true baptismal name. It is a common usage to call a married woman by the full name of her husband, prefixing the abbreviation Mrs. When, however, it is sought to bring her into court it must be by her own Christian name and not by that of her husband. Neither can she be designated in an indictment as the wife of a person named; such as charging an assault to have been made on the "wife of A."[17] But where the person murdered was the defendant's wife the fact that her Christian name was incorrectly stated in the indictment was held to be no ground for a new trial, no objection having been made at the trial.[18]

Marriage Under False Name.—A marriage under a fictitious name or under one by which the person is usually known, will not render the marriage void nor voidable, even if it is where the bans must be published.[19] Thus where a widow assumed her maiden name and was married a second time under such name with the addition of "widow," the marriage was held valid.[20] But where a change of name has been made for the purpose of committing a fraud[21] in the marriage; or even, a deliberate omission of part of the real name with a view to mislead,[22] the marriage in England will be declared void at the instance of the defrauded or deceived party.

A Legal Name.—In an Indiana case it is said; "The purpose of a name is to identify the person. By the common law, since the time of William the Norman, a full name consists of one Christian or given name, and one surname or patronymic, the two, using the Christian name first and the surname last, constitutes the legal name of the person."[23] Such is the result of all, or nearly all, of the cases; and if a man is sued by his first Christian and true surname he cannot defeat the suit or successfully insist that his Christian name is not correctly stated, nor that all of his name is not stated.[24]

Presumption as to Name.—So every man is presumed to have one full Christian and one surname; and this presumption continues until it is overthrown by positive proof.[25] But where the case was of a charge on assault and battery upon a colored person and only one Christian name, with no surname, was given him in the indictment, the court held it sufficient, on the well known fact that many colored people in that vicinity and State never had more than one name.[26] In the case cited the charge was an assault and battery on "William———a person of color" and the proof did not show that the injured person had any other name.

Initials—Such a presumption prevails even though the person has signed the document in question by his initials or by the initials of his Christian name.[27] And the fact that the instrument which is the basis of the suit and which may be set out in the pleading according to its tenor (in the strict sense as the word tenor is used) is signed by the defendant with his initials only, or with only the initials of his Christian name, does not entitle the person claiming under such instrument to bring him into court by his initials; much less has he that right where the suit is not upon such an instrument.[28] So an indictment against an individual that only sets forth the initial of his Christian name will be quashed on motion,[29] unless it sets forth that his name

[17] The exercise of this power is quite a common occurrence in Indiana where no statute authorizes it. No decision of the Supreme Court of that State on this subject has ever been rendered.

[18] Ranch v. State, 5 Tex. App. 363. See Johnson v. Patterson 59 Ind. 237

[19] Kriel v. Com. 5 Bush, 362.

[20] R. v. Inhabitants of Billinghurst, 3 M. & S. 250; See Frankland v. Nicholson therein cited, by Sir W. Scott; R. v. Inhabitants of Burton-Upon-Trent, 3 M. & S. 537; R. v. Wroxton, 4 B. & Ad. 640; 24 E. C. L. 131.

[21] R. v. Faith's, Newton, 3 D. & R. 348; 16 C. L. Rep. 171.

[22] Frankland v. Frankland cited in R. v. Inhabitants of Billinhurst, *supra*; Fellows v. Stewart, 2 Phillim. 257; 1 Eng. Ecc. Rep. 250; Meddowcroft v. Gregory, 2 Phillim. 365; 1 Eng. Ecc. Rep. 273; 2 Hagg. 207; Bayard v. Morphew, 2 Phillim. 321; 1 Eng. Ecc. Rep. 273. See also Mather v. Ney, cited, 2 Hagg. 254; Tree v. Quinn, cited, 3 M. & S. 266; s. c. 2 Phillimore, 14.

[23] Pongett v. Tompkyns, cited in 3 M. & S. 263; s. c. 2 Hagg. 142; 1 Phill. 490. See R. v. Tebshelf, 1 B. & Ad. 195; s. c. 4 Eng. Ecc. Rep. 523; Frankland v. Nicholson, cited 3 M. & S. 259; Sullivan v. Sullivan, 2 Eng. Ecc. Rep. 314. Made so by statute.

[24] Schofield v. Jennings, 68 Ind. 232; State v. Kutter, 59 Ind. 572.

[25] Buckmer's Case, 8 Co. Rep. 170; Medith v. Hinsdale, 2 Caines, 362; Franklin v. Talmadge, 5 Johns 84; *Ex parte* Snooke, 2 Hilt. 566; Coit v. Starkweather, 8 Conn. 289; Edmundson v. State, 17 Ala. 179; Keene v. Meade, 3 Pet. 1; Games v. Stiles, 14 Pet. 322; State v. Hughes, 1 Swan. 260.

[26] Zellers v. State, 7 Ind. 659; Vawter v. Gilliland, 55 Ind. 278; Gardner v. State, 4 Ind. 632; Burton v. State, 75 Ind. 477.

[27] Boyd v. State, 7 Coldw. 69.

[28] Gardner v. State, 4 Ind. 632.

[29] Hahn v. Behrman, 73 Ind. 120. In England, and probably in some of the States, if a person sign an in-

is only the initial or that his actual name is to the grand jurors unknown.[31] In some jurisdictions however the indictment is not liable to be quashed for this reason unless the record shows that the initial is not his whole Christian name.[31] Yet where a petition for a highway only set out the initials of the Christian name when the statute required the "names of the owner" of the land through which the proposed highway would run to be set out, the judgment was arrested;[32] and the same ruling was had where land was owned by partners and only the partnership name was set out,[33]

Middle Name.—The middle name of a person, or any of his Christian names, (or even all of them,) after his first Christian name, is in law no part of his name. "Any one may have as many middle names or initials as are given to him, or as he chooses to take; they do not effect his legal name; and they may be inserted or not, in a deed or contract, without affecting its legal validity."[34] Consequently where the person assaulted was laid as George W. Shott and the proof showed his name to be George Shott it was held that the conviction was correct, and that the letter W. was no part of the name, but having been so alleged it should be regarded as surplusage.[35] And this ruling is adhered to in many jurisdictions.[36] Other cases, however, hold that it is not necessary to give the middle name, nor the initial thereof, but if either is given, and in either instance there is a mistake there is a fatal variance.[37] The middle name being no part of the defendant's legal name, therefore when the indictment named the accused as William Martin and on plea in abatement the true name was shown to be John William Martin, the objection prevailed.[38] So where the charge was one of polygamy in marrying Jane Jaco, and it was proven that Jane had a middle name it was held that this middle name was unimportant and not sufficient to produce a variance.[39] Where in an attachment proceeding the wrong initial of the middle name was used this was held not to vitiate the proceedings.[40] So a deed to "Thomas H. Schofield" instead of to "Thomas N. Schofield" is good[41] If the defendant in a criminal case is charged by his middle name proof of that name must be given as alleged; and so of third person's names introduced into the indictment.[42]

Person known by Initials.—A person may become so well known by the initials of his surname as to be liable to a suit or to an indictment in which only these are used.[43] But the jury must find that he was well known by his initials.[44]

Abbreviations.—There are well known abbreviations of names, such as Joe for Joseph, Jno. for John, Geo. for George, Wm. for William, which the law recognizes as the equivolent of the full name; and suit may be maintained in that way whether the abbreviation is used in the plaintiff or defendant's name.[45]

strument with the initials of his Christian name, he may be so sued.

[30] Tuel v. Wrink, 6 Blackf. 249. But this rule does not apply so strictly to names in papers subsequently filed in the cause, in which any designation which clearly identifies the party or person referred to in connection with the cause will suffice. Gordon v. State, 59 Ind. 75.

[31] Gardner v. State, 4 Ind. 632.

[32] State v. Welster, 30 Ark. 166; See Gerrish v. State, 53 Ala. 476.

[33] Vawter v. Gilliland, 55 Ind. 278.

[34] Hughes v. Sellers, 34 Ind. 337.

[35] Schofield v. Jennings, 68 Ind. 282; Franklin v. Talmadge, 5 Johns. 84; Roosevelt v. Gardenier, 2 Cow. 463; Van Voorhis v. Budd, 30 Barb, 479; Gotobed's case, 6 City Hall Rec. 25; Milk v. Christie, 1 Hill 192.

[36] Choen v. State, 52 Ind. 347; s. c. 21 Am. Rep. 179; Miller v. State, 69 Ind. 284. See West v. State, 48 Ind. 483.

[37] Rex v. Newman, 1 Ld. Raym. 562; Edmundson v. State, 17 Ala. 179; State v. Smith, 7 Eng. 622; Erskine v. Davis, 25 Ill. 251; Hart v. Lindsey, 17 N. H. 235; State v. Moning, 14 Tex. 402; People v. Cook, 14 Barb. 259; Miller v. People, 39 Ill. 457. Early English cases regarded the middle initial part of the name if a vowel; otherwise if not. Dutton v. Simmons, 65 Me. 583; s. c. 20 Amer. Rep. 729.

[38] Price v. State, 19 Ohio 423; State v. Hughes, 1 Swan. 261; Commonwealth v. Perkins, 1 Pick 388; Commonwealth v. Hall, 3 Pick 262; State v. Homer, 40 Me. 438; State v. Dudley, 7 Wis. 664; Com. v. Shearman, 11 Cush. 546; Com. v. McAvoy, 16 Gray 235. Where the name in the caption of the indictment contained the initial of the middle name, and it was not so set out in the body of the indictment, a motion to quash was overruled. O'Conner v. State, 97 Ind. 104.

[39] State v. Martin, 10 Mo. 391. In Georgia in a civil suit such a variance is amendable instanter. Jernigan v. Carter, 60 Geo. 131.

[40] State v. Williams, 20 Iowa, 98. If the accused uses only his middle name and he is so indicted, he cannot object. U. S. v. Winter, 13 Blatchf. 276.

[41] Morgan v. Woods, 33 Ind. 23; *Contra*, Dutton v. Simmons, 65 Me. 583; s. c. 20 Am. Rep. 729.

[42] Schofield v. Jennings, 68 Ind. 232.

[43] Rockwell v. State, 12 Ohio St 427.

[44] City Council v. King, 4 McCord, 487; Smith v State, 8 Ohio 294; Diggs v. State, 49 Ala. 311.

[45] Vandermark v. People, 47 Ill. 122; Diggs v. State 49 Ala. 311. See where a defendant was held to be con-;

But where the defendant was indicted by the name "Ben" as his Christian name the court considered the name given as a full name, saying "it seems to us that Ben may have been the true and full Christian name of the appellant. Ben is not necessarily a contraction of Benjamin, Benoni, Benedict, or any other name, and, on the motion to quash, the court, we think, was right in assuming that Ben may have been the full Christian name of the appellant. The motions to quash and in arrest were properly overruled,[46]

Junior and Senior.—Neither Junior nor Senior is any part of a name, and if it is added in the indictment or pleadings, or is omitted, it need not be proven; and failure to prove it when added is no variance.[48] If father and son have both the same name, the naming of one of them is *prima facie* naming the father and it is so construed.[48] Where the ownership of the stolen property was laid in W. R. "the second of the name" it was held sufficient and the conviction was sustained, the proof showing that he was generally known as "W. R. Jr.," this being no variance.[49] So where a judgment was recovered by "F. Junior," while the *narr.* named the plaintiff as F. and it was not alleged that there were two persons bearing the name, it was held there was no variance.[50] But a deed from G. of H. to G. Jr. of H. was presumed to be from father to son.[51]

Initials of Third Person.—Where it is necessary to use the name of third persons in legal papers, reference to them (as in cases of an assault or larceny) by the initials of their Christian names is sufficient; and of this examples have already been given.[52] But other cases require the full name of the owner of the stolen property to be given.[53]

Misnomer.—If a defendant is wrongly named in the writ or summons it is good cause for a plea in abatement,[54] but it can only be taken advantage of by plea,[55] and if he pleads to the complaint or declaration he will conclude himself and cannot afterwards object.[56] So if a defendant is wrongly named in an indictment, by pleading to it he admits his name to be as laid, or is estopped to allege another.[57] And if the plaintiff sue by his wrong name advantage of this error can only be taken by plea in abatement;[58] and the plea must be so full and certain as to exclude the plaintiff's right to sue the defendant by the name used.[59] A slight variance, either of the plaintiff's or defendant's, in the name, however is immaterial; and a plea, when the defendant was sued by the name of Conavay and he set up that his name was Conaway the plea was held to be a nullity; but his co-defendant, having been sued by the name of Conway, set up that his name was Conaway, and it was held it might have been replied to by alleging that he was known as well by the name Conway as Conaway.[60] And the rule that advantage of this error can only be taken by plea, applies to a case where only the surname, or possibly the Christian name, of the defendant is stated in the complaint or declaration; and a demurrer will not lie for want of facts sufficient to constitute a cause of action by reason of the omission.[61] If, however, a defendant, or a plaintiff, where several are necessary parties, is wrongly named in the complaint, and the suit is upon a written instrument showing who are the

cluded by having used the initial of his Christian name, Singer Manf. Co. v. Paul, 48 Ind. 98.

[46] State v. Kean, 10 N. H. 347; People v. Ferguson, 8 Cow. 102, 116.

[47] Burton v. State, 75 Ind. 477.

[48] State v. Groat, 22 Me. 171; Cobb v. Lucas, 15 Pick. 1; Kincaid v. Howe, 10 Mass. 203; Com. v. Perkins, 1 Pick. 388; People v. Collins, 7 Johns. 549; Brainard v. Stilphin, 6 Vt. 9; People v. Cook, 14 Barb. 259; State v. Weare, 38 N. H. 314; Com. v. Beckley, 3 Met. 330; Jackson v. Provost, 2 Caines, 164; Padgett v. Lawrence, 10 Paige, 170; Fleet v. Youngs, 11 Wend. 522; Hadley v. Shaw, 30 Ill. 354; Allen v. State, 93 Ind. 486.

[49] Brown v. Benight, 3 Blackf. 39; Lepiot v. Browne, 1 Salk. 7; Stebbing v. Spicer, 8 M. G. & S. 827; Stevens v. West, 6 Jones, (N. C.) L. 49; State v. Vittum, 9 N. H. 519.

[50] Com. v. Parmenter, 101 Mass. 211.

[51] Weber v. Fickey, 5 Md. 500.

[52] Cross v. Martin, 46 Vt. 14.

[53] State v. Black, 31 Tex. 560; State v. Seeley, 30 Ark. 162; State v. Brite, 73 N. C. 26; Mead v. State, 26 Ohio St. 505; Ferguson v. Smith, 10 Kan. 396; People v. McGilver, W. C. Rep. 490.

[54] Willis v. People, 1 Scam. 399.

[55] Baker v. Bessey, 73 Me. 472; Mann v. Carley, 4 Cowen, 148; Miller v. Stettiner, 7 Bosw. 692; Id. v. Id. 22 How. Pr. 518.

[56] McCarthy v. McCarthy, 66 Ind. 129; Houk v. Barthold, 73 Ind. 21.

[57] Sinton v. Steamboat R. R. Roberts, 46 Ind. 476; McCarthy v. McCarthy, 66 Ind. 128.

[58] Mayo v. State, 7 Tex. App. 342; Musquez v. State, 41 Tex. 226.

[59] Watson v. Watson, 47 Mich. 427; Peden v. King, 30 Ind. 181.

[60] Lyons v. Rafferty, 30 Minn. 526.

[61] Conaway v. Hays, 7 Blackf. 159.

necessary parties, it would seem that a demurrer would lie for a defect of parties.[62]

Plea in Abatement.—The person filing a plea in abatement assumes the burden of proving that there is a misnomer. The opposite party may allege that he is in court by his correct name or by the name he is known by; and he may go farther and allege and prove that he is not only known by the name in which he is brought into court, but by the name such adversary alleges he should be impleaded by, even though it is not charged, *e. g.*, in an indictment, that he is known by both names.[63] Whether a person is as well known by one name as another, is a question of reputation, custom and usage, and not to be determined by records, or limited to names used in the person's presence.[64] If he has plead by the name used in the indictment to a former indictment, that fact is admissible in evidence against him.[65] So if he is indicted by the initials of his Christian name alone, the fact whether he is so known may be put in issue; and if the issue is proven against him he may be convicted, all other facts necessary to a conviction being proven.[66] In such cases the following instruction to the jury as a test has been held correct, viz: "If a stranger should go where the defendant is known and inquire for his house, would those of whom he inquired, recognize the man inquired for as well by one name as the other?" [67] If the two names are *idem sonam*, of course, the plea of abatement is not sustained.[68] A misstatement of the middle name is no ground for a plea in abatement;[69] and if in the plea of abatement it is alleged that the defendant's baptismal name is his true name the allegation must be proven as alleged and not that he is so generally known.[70]

Effect in Sustaining Plea in Abatement.—Formerly if the plea of abatement was sustained in criminal cases the indictment abated;[72] but the better and modern practice now is to insert the name found to be the correct one in the indictment and proceed to the trial of the case; for such a practice does not impair the accused's defence, and the only object in allowing the plea is that he may be able at some future time, when indicted for the same offense, more easily to plead former acquital or conviction.[72] Usually this practice is introduced by statute; and even in England in cases of felony the party, if the plea was found in his favor, must plead over to the indictment.[73] So in civil cases the only effect of allowing the plea is the insertion of the proper names in the record.[74] The plea must set out the person's true name, and exclude all inference or presumptions that he is known or called by the name he is sued in;[75] and one party cannot maintain the plea because his co-party is wrongly named.[76]

Alias Dictus.—If a defendant is known by two or more names, and it is uncertain which one is his true name, in pleading he may be designated by one name with the specification that he is also or otherwise called by the second name; and in some States the practice is to state it as follows: "Smith *alias* Jones."[77] And this rule is applcable to the name of the injured person.[78] Because the *alias dictus* is used does not render the indictment bad for uncertainty or duplicity,[79] nor produce a

[62] Hahn v. Behrman, 73 Ind. 120; Morningstar v. Wiles, 96 Ind. 458. See Hopper v. Lucas, 86 Ind. 43; Peden v. King, 30 Ind. 181.

[63] Sinton v. Steamboat R. R. Roberts, 46 Ind. 476. Where the Christian name of the plaintiff was erroneously stated in the summons, but correctly stated in the complaint on file, the plaintiff was allowed to amend the summons by the complaint. Haines v. Bottorf, 17 Ind. 348. See Greenman v. Cohee, 61 Ind. 201; and a like ruling was made where the Christian name of the defendant was wrongly named, Shackman v. Little, 87 Ind. 181.

[64] Johnson v. State, 46 Geo. 269.

[65] Com. v. Gale, 11 Gray, 320; Washington v. State, 68 Ala. 85.

[66] State v. Homer, 40 Me. 438; White v. State, 2 Ala. L. Jr. 31.

[67] Diggs v. State, 49 Ala. 311.

[68] State v. Dresser, 54 Me. 569.

[69] 2 Hale P. C. 238; 1 Starkie Crim. Pl. (2 ed.) 310-320.

[70] Tibbetts v. Kial, 2 N. H. 557: Petrie v. Woodworth, 3 Cai. 219; Com. v. Gillespie, 7 S. & R. 479; Mann v. Carley, 4 Cow. 148; People v. LeRoy, 3 W. C. Rep. 785.

[71] Pace v. State, 69 Ala. 231; McAfee v. State, 14 Tex. App. 668.

[72] Alexander v. Com. 4 Crim. L. Mag. 829.

[73] 1 Bac. Abr. 10.

[74] Waterbury v. Mathes, 16 Wend. 611; 1 Chit. Pl. 246; Rogers v. Boehm, 2 Esp. 702; Dickinson v. Bower, 16 East 110; Reeves v. Slater, 7 B. & Cres. 487; Boughton v. Freer, 3 Comp. 29; Collman v. Collins, 2 Hall (N. Y.) 569, 577; Murray v. Hubbart, 1 B. & P. 645.

[75] 1 Bac. Abr. 10; Haworth v. Spraggs, 8 T. R. 518; Lyons v. Rafferty, 30 Minn. 526.

[76] 1 Bac. Abr. 10.

[77] 1 Bish. Crim. Proc. (2d) § 681; 2 Chitt. Crim. L., 2; Kennedy v. People, 39 N. Y. 245; Haley v. State, 63 Ala. 89.

[78] Kennedy v. People, *supra*.

[79] Kennedy v. People, *supra*.

variance.[80] An early case held that the Christian name could not be averred under an *alias*;[81] but such is not the case now under the modern decisions.[82] When indicted under an *alias* it is sufficient to show that the defendant is known by either name, it is not necessary to prove that he is known by both; and this rule is applicable to the name of the injured person.[83]

Unknown.—Where the name of the accused, or the name of a third person is unknown, and there has been no negligence in finding it out, it is ordinarily sufficient to state that it is unknown.[84] In an English case it was suggested by the court that an unknown person could be indicted by alleging that his name was unknown to the grand jurors, but who was personally brought before the jurors by the keeper of the prison; and "an indictment," it is said, "was proferred accordingly, and the prisoner was convicted."[85] So a man described as L. J. Jones, whose given name is to the grand jurors unknown, was held a sufficient description.[86] But "a man in Turner Hall, whose name to the grand jurors is unknown," was held bad for uncertainty.[87] In another case it is said the defendant may be indicted by any name which will identify him, with the allegation annexed that his true name is unknown;[88] and in another where the surname is used it is said not necessary to give the person a fictitious Christian name.[89]

In divorce cases in charging adultery as the cause, it may be alleged that the offence was committed with a person whose name is unknown if such is the fact; or with divers persons whose names are unknown to the petitioner.[90] In Arkansas it is held that if the accused in an indictment is sufficiently identified as the person the grand jury intended to present, it need not be proven that his name is unknown.[91] But the general rule is that the proof must correspond with the allegation in such cases, that it must be shown that the name of the person was unknown to the grand-jurors;[92] yet it is not necessary to prove this allegation beyond a reasonable doubt.[93]

Signatures.—To sign the name is "to write one's name on paper or to show or declare assent or attestation by some sign or mark;"[94] and "a signature consists both of the act of writing a party's name and of the intention thereby authenticating the instrument."[95] In signing the name to an instrument, legal or not legal, a pencil may be used, although as a matter of permanence or security ink is preferable.[96] So a printed name may be adopted; but in such a case it must be proven that it was so adopted.[97] And another may sign the maker's name in his presence at his request[98] even to a deed[99] without using a mark; or even out of his presence if authorized to do so by verbal agreement,[100] but probably not a deed. In ordinary documents of business a signing by the initials is sufficient;[101] or by any mark

[80] Harrison v. State, 6 Tex. App. 512. See United States v. Wright, 16 Fed. Rep. 112.

[81] Because a person could only have one Christian name. Rex v. Newman, 1 Ld. Raym. 562.

[82] Lee v. State, 55 Ala. 259.

[83] Evans v. State, 62 Ala. 6. See Barnesciotta v. People, 17 N. Y. Supr. Ct. 137; Williams v. State, 13 Tex. App. 285.

[84] State v. Higgins, 2 Crim. L. Mag. 753; Ben v. State, 9 Tex. App. 107; State v. McIntyre, 13 N. W. Rep. 287; Rutherford v. State, 13 Tex. App. 92; Campbell v. State. 10 Ind. 420; Bryant v. State, 36 Ala. 270; State v. Hand, 1 Eng. (Ark.) 165; State v. O'Donald, 1 McCord. 532; Buck v. State, McCook, 61.

[85] Rex v. ——, Russ & Ry. 489.

[86] Jones v. State, 11 Ind. 357. See Skinner v. State, 30 Ala. 524.

[87] Geiger v. State, 5 Iowa, 484.

[88] State v. Burns, 8 Nev. 251.

[89] Harris v. State, 2 Tex. App. 102. It cannot be objected successfully that the name used is different in different languages, and therefore uncertain; as "one Ambrosio, whose Christian name is unknown." State v. Bayonne, 23 La. Ann. 80.

[90] Germond v. Germond, 6 Johns. Ch. 347; Wood v. Wood, 2 Paige, 108; Garratt v. Garratt, 4 Yeates, 244; Church v. Church, 3 Mass. 157; Choate v. Choate, 3 Mass. 391; Dunlap v. Dunlap, Wright, 210; Richards v. Richards, Wright, 302; Sanders v. Sanders, 25 Vt. 713; Mansfield v. Mansfield, Wright, 284; Bird v. Bird, Wright, 98; Morrell v. Morrell, 1 Barb 318; Trubee v. Trubee, 41 Conn. 36; Black v. Black, 12 C. E. Gr. (N. J.) 664; Mitchell v. Mitchell, 61 N. Y. 398.

[91] Kelley v. State, 25 Ark. 392.

[92] Stone v. State, 30 Ind. 115; Com. v. Stoddard, 9 Allen, 280; Rothersfield v. State, 7 Tex. App. 519.

[93] Guthrie v. State, 21 N. W. Rep. 455; 16 Neb. 667.

[94] James v. Patten, 6 N. Y. p. 13.

[95] Watson v. Piper, 32 Miss. 466.

[96] Brown v. Butcher's Bank, 6 Hill, 443; Closson v. Stearns, 4 Vt. 11; Reed v. Roark, 14 Tex. 329; Geary v. Physic, 5 B. & C. 234; McDowell v. Chambers, 1 Strobh. Eq. 347 (a deed).

[97] Schneider v. Norris, 2 Maule & S. 286; Pennington v. Baehr, 2 Cent. L. J. 92; s. c., 48 Cal. 565.

[98] Sager v. Tupper, 42 Mich. 605.

[99] Mutual Benefit Life Ins. Co. v. Brown, 30 N. J. Eq. 193; Lovejoy v. Richardson, 68 Me. 386.

[100] 1 Chitty on Bills, 28; 1 Daniel's Neg. Inst. § 289.

[101] Merchants' Bank v. Spicer, 6 Wend. 443; Palmer v. Stephens, 1 Denio, 471.

which the party may use with the intention of binding himself;[102] and a witness to the signature is immaterial so far as its binding effect is concerned.[103] Thus the figures "1, 2, 8," signed to note has been held sufficient.[104] But where a deed purported to be signed and acknowledged by a mark, and no mark appeared, it was held that there was no signing.[105] If another sign the grantor's name to a deed, the grantor adopting the signature, it is unnecessary for him to make his mark.[106] Of course if a party in signing an instrument assumes a name not his own and then signs the instrument he is bound.[107] If the foreman of a grand jury only use the initial of his Christian name in endorsing an indictment, this will not render it liable to be quashed;[108] and the same is true if the prosecuting attorney thus signs that instrument.[109] And in fact if the surname is used no legal instrument is invalid simply because the initial of the Christian name only is used.[110]

Identity of Name with the Person.—"The general rule is that identity of name is presumptive of identity of person."[111] This rule is directly recognized in many cases;[112] and by leading authority it is said: "Generally speaking it will be considered sufficient *prima facie* evidence to show that a person bearing the same name as the party to the suit did the act with which it is sought to effect such party."[113] Thus where W. J. D. was the plaintiff and the defendant averred that W. J. D. had obtained a judgment for the same matter without averring the identity, it was held a sufficient answer, the identity of the parties being presumed from the identity of the names.[114] It results from these cases that similarity of names is sufficient to authorize a verdict unless some evidence in rebuttal is given.[115] Thus where the name of the grantee of land and that of a prior holder and grantor are the same, it will be presumed they designate the same persons;[116] and so of two grants of land to the same name.[117] So it was held that entries in a church register showing that W. A. had a son baptized as S; that years after S. A. had a daughter baptized as M. and that years after M. A. was married to P. was held sufficient evidence to go to the jury that P. married a grandaughter of W. A., nothing appearing to show that there were other persons of those names; and that it may be presumed that persons named in the register were the ancestors of the claimant, where all bear the appropriate names, the dates of the several baptisms and marriages being at such distance of time from each other as to be consistent with the claim.[118] One authority has limited the general rule by an exception in those instances where the evidence of the persons whose identity is sought to be proven with the name lives in a large city or town, in which case he says proof of some additional circumstance seems to be necessary;[119] and other intimations can be found limiting the presumption to those instances where the person is a resident of the the place where the inquiry is had.[120] These ases are not, however, as well received by courts as those previously cited, and in all

[102] Lyons v. Holmes, 11 S. C. 429.

[103] Willoughby v. Moulton, 47 N. H. 205; Shank v. Butsch, 28 Ind. 19; Flint v. Flint, 6 Allen, 34; George v. Surrey, 1 Moody & M. 516; Hilborn v. Alford, 22 Cal. 482.

[104] Brown v. Butchers' Bank, 6 Hill. 443.

[105] Jones v. Gurlie, 61 Miss. 423. If a mark is used, but the words "his" or "her mark" is omitted, there is a sufficient signing. Shank v. Blatsch, 28 Ind. 19.

[106] Nye v. Lowry, 82 Ind. 316.

[107] Bell v. Sun Printing etc. Co., 42 N. Y. Supr. Ct. 567: Moffat v. McKissick, 8 Baxt. 517.

[108] Com. v. Gleason, 110 Mass. 66; Stone v. State, 30 Ind. 115; Wassels v. State, 26 Ind. 30.

[109] Vanderkarr v. State, 51 Ind. 91.

[110] Regina v. Avery, 18 Q. B. 576; State, *ex rel.* Collins v. Beck, 81 Ind. 500. It is worthy of note that the treaty now in force between England and the United States is signed on the part of England with only one name.

[111] Aultman, Miller & Co. v. Timm, 93 Ind. 158.

[112] State v. Moore, 61 Mo. 276; Jackson v. Goes, 13 Johns. 518; Jackson v. King, 5 Cow. 237; Jackson v. Cody, 9 Cow. 140; Hamber v. Roberts, 18 L. J. C. P. (N. S.) 250; s. c., 7 C. B. 860; Sewall v. Evans, 4 Q. B. 636; Simpson v. Dismore, 9 M. & W. 47; s. c., 1 Dowl. P. C. (N. S.) 357; Hatcher v. Rocheleau, 18 N. Y. 86; Fanning v. Lent, 3 E. D. Smith, 206; Jackson v. Christman, 4 Wend. 277; Cross v. Martin, 46 Vt. 14; Greenshields v. Crawford, 9 M. & W. 314; Harrington v. Fry, R. & M. 90; Roden v. Ryde, 4 Q. B. 629; Atchison v McCulloch, 5 Watts, 13.

[113] 2 Phill. Ev., 508.

[114] Douglass v. Dakin, 46 Cal. 49.

[115] Burns v. Hyatt, 1 Pa. L. J. Rep. 323.

[116] Brown v. Meta, 33 Ill, 339; Cross v. Martin, 46 Vt. 14.

[117] Cates v. Loftus, 3 A. K. Mar. 202. But see Mooers v. Bunker, 29 N. H. 420.

[118] Jackson v. King, 5 Cow. 241 (disapproving of 1 Campb. 196; 4 Campb. 34). See Hubbard v. Lees, L. R. 1 Ex. 255.

[119] 2 Greenlf. Ev., § 278d.

[120] See Page v. Mann, 1 Mood & Malk, 79; Nelson v. Whittal, 1 B. & A. 21.

such instances the courts are inclined to throw the burden upon the person denying it to show that he is not the person named Thus a judgment rendered against a person in Mississippi was presumed to be the same person when sued in New York and *res ad judicata* was plead.[121] If however, any "facts are brought out which casts a doubt upon the identity of the party this general rule [of identity] will not be allowed to prevail."[122] The identity of the person and the name is stronger or weaker according to the circumstances of each case;[123] and in Michigan it is held that it cannot be assumed as a legal presumption that where the family name and the initials are the same the persons are identical.[124] If the name is very common some courts refuse to hold presumptively the name to be identical with the person.[125] On the ground that the middle name is no part of the name the variance in the two names by the insertion or omission of the initial of the middle name,or of the name itself, does not overthrow this rule of presumption that they are identical;[126] but if in signing the name only the initials are used no presumption of ident ity arises;[127] and no presumption of identity arises where the maker's name is the same as that of an indorser of the note.[128] Identity of the name and person, or of two names, however, are presumed "even if there be a variation in the spelling, provided the two names are *idem sonans*."[129]

W. W. THORNTON.

Crawfordsville, Ind.

[121] Hatcher v. Rocheleau, 18 N. Y. 86; Bogue v. Biglow, 29 Vt. 183.
[122] Aultman, etc. v. Timm, 93 Ind. 158.
[123] Moog v. Benedict, 49 Ala. (1874) 512. See Houk v. Barthould, 73 Ind. 21.
[124] Bennett v. Libheart, 27 Mich. 489.
[125] Jackson v. Christman, 4 Wend. 277; Jones v Jones, 9 M. & W. 75.
[126] Hunt v. Stewart, 7 Ala. 525. See Fletcher v. Conly, 2 Gr. (Ia.) 88.
[127] Jones v. Turnour, 4 C. & P. 204.
[128] Curry v. Bank of Mobile, 8 Port. (Ala.) 360.
[129] Kelly v. Volney, 2 Amer, L. Reg. 499; s. c., 5 Pa. L. Jr. Rep. 700, citing Jackson v. Cady, 9 Cow. 140.

DELAY IN PRESENTMENT OF CLAIMS AGAINST DECEDENTS' ESTATES.

LEWIS V. CHAMPION.*

New Jersey Chancery Court, May Term, 1885.

ESTATES OF DECEASED PERSONS. [*Presentment of Demands—Extension of Time.*] *Waiver by Executor of Statute Limiting Time for Presenting Demands.*—Executors' verbal statements to a creditor of the estate, that his claim was all right, and that they would pay it as soon as they had enough money on hand to do so, will not excuse such creditors neglect to present the claim to them formally within the time limited by the order of the court, nor estop them from setting up the order; nor will an allegation that they have wasted the estate, unsupported by a statement of the facts constituting such waste, render them personally liable to a creditor of the estate.

Bill for relief. On general demurrer.

Mr. A. Stephany, for demurrant; *Mr. B.G. Peck*, for complainant.

RUNYON, CHANCELLOR.

The bill states that George W. Hinkle, now deceased, borrowed of the complainant, on or about December 3d, 1883, $1,000 upon his, Hinkle's promissory note, which was unpaid and not due when the latter died, which was but a few days after the note was given; that the defendants, the executors of Hinkle, took an order to limit creditors, the time limited wherein expired September 19th, 1884; that the order was duly published, and that the complainant had no knowledge of the order, and therefore did not present his claim under oath until after the limited period had expired, and when he did so present it after the expiration of that period, the defendants refused to receive it, on the ground that it was not presented in due time. The bill states that each of the defendants promised the complainant, before the time limited in the order expired, to pay the claim, and said it was included among the debts. It alleges that the defendants made those promises and that statement, for the purpose of defeating the complainant's claim and deterring him from taking any measures to secure it, and it states that the defendants allege that the estate is insolvent. It states that the defendants are wasting the estate and converting it to their own use. It prays answer not under oath; that the defendants may be required to admit the claim among the debts and liabilities of the estate; that if the estate be solvent, they may be decreed to pay the claim in full, or that if it be insolvent, they may be decreed to pay the ratable proportion of the claim, and that they may be decreed to be personally liable for the claim, and may be compelled to pay it. The defendants filed a general demurrer. It will have been seen that the complainant alleges that he had no knowledge of the order to limit creditors, and therefore did not put in his claim, under oath, until after the period limited

*S. C. 40 N. J. Eq. 59.

for the purpose in the order had expired. If the estate be insolvent, his claim is barred of a dividend by his failure to put it in under oath within the limited period, and no recognition of the claim by the executors, or by the orphans court itself, can supply the place of the statutory requirement. Gould v. Tingley, 1 C. E. Gr. 501. If the estate be not insolvent, the case made by the bill is not such as to warrant a decree depriving the executors of the protection against suit for claim which the statute gives them under the order to limit. They appear to have duly taken and published the order. They made no false or fraudulent representation to deter the complainant from making due proof of his claim. It is indeed alleged that their recognition of the claim, and promise to pay, were with a fraudulent design, but the facts stated do not support the charge. Their promises were promises to pay the debt out of the assets of the estate in due course of administration. They did not bind the executors, individually. They were without consideration, and oral, merely. The circumstances, according to the bill, were as follows: In April, 1884, the complainant called on Mr. Evans, one of the two executors, and gave him a notice from the bank in which the note was, demanding payment of the note, and then presented the claim to Evans, who received it as a just claim against the estate, saying that he had personal knowledge of it, and that it was all right. The complainant then inquired of him what he intended to do about paying the note, and Evans replied that he had only about $200 in bank belonging to the estate, and could not pay it then, but would pay it so soon as money enough of the estate should come into his hands to enable him to do so. The complainant asked him what was the amount of the assets of the estate, and Evans replied that the inventory amounted to $9,209.57, and the claims to about $4,000, including that of the complainant. Afterwards the complainant saw the other executor, Mr. Champion, and presented the claim to him, and he recognized and received it as a just claim against the estate, saying that he knew all about it, but could not pay it at that time for want of funds of the estate wherewith to pay it when he got the money. The complainant's attorney called on Evans in April, 1884, and conversed with him about the claim. The latter said the amount of the inventory was $9,209.57, and the debts, including the claim of the complainant, which had been received, $4,000. In all this there is no evidence of fraudulent design on the part of the defendants, or either of them. Nor was there anything more than the ordinary replies made under such circumstances by executors to creditors inquiring concerning estates supposed to be entirely solvent, as the estate of Hinkle was then believed to be. The effect of such promises on the part of executors would be, at most, if their conduct had been inequitable to the prejudice of the complainant, misleading him, and so preventing him from putting in his claim, to estop them from setting up the bar of the statute under the order to limit to a suit brought by the complainant against them with a view to obtaining satisfaction of his claim out of the estate. But, as before stated, there is nothing in this case to create such an estoppel. The complainant was bound to take notice of the proceedings taken by the executors, according to the statute, in the course of the administration, and to comply with the requirements of such proceedings, so far as applicable to them, and calling for their action. It may be observed that, as before stated, the bill alleges that the promises were made with the intention to defraud the complainant, but that allegation, though a statement in form, is, in fact, but a mere charge, and, as before remarked, is unsupported by the facts set forth in the bill. It may be added that the bill states that the executors have wasted the estate and have converted it to their own use, but this allegation being sustained by no statement of fact, is insufficient. Kerr Fr. 365. It may be added that no relief is sought which is based on such alleged waste or conversion.

The demurrer will be allowed.

NOTE.—That an executor or administrator is bound to plead the statutory bar after it has attached, see Wood's Lim. § 188; 3 Wms. on Exrs. (6th Am. ed.) 1905 (1803); Rockport v. Walden, 54 N. H. 167, 173; Stiles v. Smith, 55 Mo. 363; Littlefield v. Eaton, 74 Me. 516; see Boynton v. Sandford, 1 Stew. Eq. 184; and his general request to a creditor of the estate for delay, or an assurance that the debt is good, will not prevent the operation of the statute, Langham v. Baker, 5 Baxt. 701; Loyd v. Loyd, 9 Baxt. 406; Harrington v. Rich, 6 Vt. 666; see Harrison v. Jones, 33 Ala. 258; Sutton v. Burruss, 9 Leigh 381; Chesnutt v. McBride, 1 Heisk. 389; nor his admissions as to the correctness of the amount of the claim, Clark v. Davis, 32 Mich. 154; nor his knowledge or notice of the existence thereof, McDowell v. Jones, 58 Ala. 25; Pike v. Thorp, 44 Conn. 450; see Stewart v. Carr, 6 Gill 430; Perry v. West, 40 Miss. 233; Gansevoort v. Nelson, 6 Hill, 389.

In some States, by statute, equitable relief is authorized where "peculiar circumstances" have prevented the creditor from presenting his claim in due time, Brownell v. Williams, 54 Iowa 353; Baldwin v. Dougherty, 39 Iowa 50; Wilcox v. Jackson, 57 Iowa 278; see Waltham Bank v. Wright, 8 Allen 121; Jenney v. Wilcox, 9 Allen 245; and, in some instances, without the aid of such statutes, relief has been granted in equity for the representative's fraud, or on some other equitable ground, Clifton v. Haig, 4 Desauss. 330; Rose v. Clark, 1 Root 229; Dickey v. Corliss, 41 Vt. 127, see Stroud v. Barnett, 3 Dana 391; Clark v. Hoyle, 52 Ill. 427; Hales v. Holland, 92 Ill. 494; Fairfield v. Fairfield, 15 Gray 596; Moody v. Harper, 38 Miss. 599; Wilkins v. Finch, Phil. (N. C.) Eq. 355; Ragsdale v. Holmes, 1 Rich. (N. S.) 91; but the claimant must establish a clear case, Blanchard v. Williamson, 70 Ill. 647; Given v. Whitmore, 73 Me. 374; and relief has been refused for want of jurisdiction, Winegar v. Newland, 44 Mich. 367; Cooper v. Lyons, 9 Lea 596; Pulliam v. Pulliam, 10 Fed. Rep. 53; Brashears v. Hicklin, 54 Mo. 102; Tazewell v. Whittle, 13 Gratt. 329; see Packard v. Swallow, 29 Me. 458; Martin v. Campbell, 35 Ark. 137; Long v. Mitchell, 63 Ga. 769.

In Emson v. Ivins, MS. N. J. Chan. Nov. 1883 a

creditor of an estate failed to present his claim within the time limited, but the executrix made payments thereon both before and after the expiration of the time fixed by the order. The executrix afterwards confessed a judgment for a large amount, and the sheriff levied on the assets of the estate and sold them. The creditor thereupon filed a bill in equity to recover his debt, and obtained a preliminary injunction restraining the sheriff from paying over the proceeds of his sale to the judgment creditor, on an allegation that the confessed judgment was fraudulent as to him. On motion to dissolve this injunction, Vice-Chancellor Bird ordered it to be retained until final hearing.

In Whitmore v. San Francisco Sav. Union, 50 Cal. 145, a debtor had conveyed land to his creditor, in trust to secure his promissory note. After the debtor's death the creditor failed to present his claim to the executor in due time—*Held*, that the court would not compel him to surrender his security, nor enjoin him from selling the land under a power contained in the deed of trust.

JOHN H. STEWART.

Trenton, N. J.

CONVEYANCE OF WIFE'S LAND.

SCHLEY V. PULLMAN PALACE CAR CO.; SAME V. ALLEN PAPER CAR-WHEEL CO.; SAME V. TRUSTEES PULLMAN LAND ASSOCIATION.

Circuit Court, N. D. Illinois, December 23, 1885.

HUSBAND AND WIFE. [*Conveyance of Wife's Land—Joint Grantors*]—*Joining in Deed of Conveyance—What a Sufficient—Illinois Act of February 22, 1847.*—Under a statute of Illinois, passed February 22, 1847, providing that "when any *feme covert*, not residing in this State, *shall join with her husband* in the execution of any deed of lands in this State, she shall thereby be barred of and from all estate therein in like manner as if she was sole; and the acknowledgement may be the same as if she were sole." 2 Scates, T. & B. Stats., 965. *Held*, that the *joining of the husband with the wife* by signing, sealing and acknowledging *her deed*, is a substantial compliance with the statute and sufficient to convey the title.

1882-432

Ejectment.

S. Corning Judd, and *Ritchie, Esher & Judd*, for plaintiff; *Alfred Ennis, Lyman & Jackson*, and *Flower, Remy & Gregory*, for defendants.

GRESHAM, J., delivered the opinion of the court:

These are actions in ejectment to recover lands upon which the City of Pullman in part stands. Juries were waived, and the cases were submitted to the court upon a stipulation that if the following instrument were held valid and binding as a deed of conveyance by husband and wife, judgment should be entered for the defendants:

"This indenture, made this twenty-sixth day of May, A. D. 1856, witnesseth, that I, Christina Lynn, sister and heir at law of Henry Millspaugh, deceased, who was a recruit of Lieutenant T. W. Denton, of the 13th regiment, United States infantry, war of 1812, with Great Britain, of the county of St. Clair and State of Michigan, party of the first part, in consideration of the sum of $43 in hand paid by Milton and Thomas C. McEwen, of the county of Orange and State of New York, party of the second part, the receipt of which is hereby acknowledged, do hereby release, grant, bargain, and quitclaim unto the said party of the second part, their heirs and assigns, forever, all her right, title, claim, and interest in that certain tract of land granted by the United States unto David Millspaugh and Christina Lynn, the brother and sister and only heirs at law of Henry Millspaugh, deceased, as follows, to-wit: The south-east quarter of section numbered fifteen, (15,) in township numbered thirty-seven, (37,) north, of range numbered fourteen (14) east, in the district of land subject to sale at Chicago, State of Illinois, containing one hundred and sixty (160) acres, by letters patent bearing date of Nov. 23, A. D. 1849, and founded upon warrant No. 27,-495, as reference being made to said patent will more fully appear,—to have and to hold the said premises, with all the appurtenances thereunto belonging, or in anywise appertaining, to their only proper use, benefit, and behoof of said parties of the second part, their heirs and assigns, forever.

"In witness whereof, the said grantors have hereunto set our hands and seals, the day and year first above written.

"CHRISTINA LYNN. [Seal.]
"WILLIAM LYNN." [Seal.]

Following is the certificate of Obed Smith, a justice of the peace, of St. Clair county, Michigan, dated May 27, 1856. The officer certified that on that day Christina Lynn and William Lynn, her husband, personally appeared before him; that he knew them to be the persons who executed the foregoing instrument; that they acknowledged it to be their free act and deed; and that after he had personally examined the wife, separate and apart from her husband, and had fully informed her of the contents, she acknowledged that she executed the same freely, and without compulsion from her husband.

Section 2 of the act of February 22, 1847 (2 Scates, T. & B. St. Ill. 965), declares that when any married woman, above the age of eighteen years, and not residing in this State, joins with her husband in the execution of any deed, mortgage, or conveyance of any real estate situated within Illinois, she shall be barred thereby of all the estate, right, title, interest, and claim of dower therein, the same as if she were unmarried and of full age; and it is further declared that such a married woman may acknowledge such deed, etc., as if she were unmarried. This statute was in force when Mrs. Lynn and her husband executed the deed in Michigan where they then resided, and she was at that time above the age of eighteen. It is insisted by counsel for the plaintiff that the statute required the husband to be a joint grantor with his wife; that his mere signing, sealing, and acknowledging the deed was not sufficient when his name did not appear in the granting clause or body of the instrument; and that it was therefore inoperative and void. It was only

in substantial compliance with this statute that the wife could convey title to her lands. The husband was required to join her in the execution of this deed? That he intended to do so, and thought he had, admits of no doubt; and it is equally clear that both the wife and husband undertook in good faith to convey their entire interest and estate in the premises to the grantees. The husband signed, sealed, and acknowledged the deed, to enable his wife to convey her title, and to convey any claim or right, present or contingent, that he had in the land. The wife and her husband rested and no doubt died in the belief that they had joined in the execution of a deed in compliance with the statute; and it remained for some one, after the lapse of twenty-nine years, to discover, as he supposed, that they had utterly failed to accomplish what they undertook to do, and what they supposed they had done. Courts should uphold deeds and other contracts when the intention of the parties is clear. Although the husband's name does not appear in the body of the deed, he signed, sealed, and delivered it, and thus joined his wife in its execution.

Johnson v. Montgomery, 51 Ill. 185, was a suit for assignment of dower. On January 26, 1853, Johnson, a resident of Ohio, executed in that State a deed conveying his lands in Illinois to Montgomery. Johnson's wife signed the deed with her husband, and acknowledged it before a proper officer. The certificate of acknowledgment was in conformity with the statute, but the body of the deed did not describe Johnson's wife as a grantor, or name her in connection with dower, or in any other way. In holding that this was a valid deed, and sufficient to relinquish the wife's right of dower, under section 21 of the act of 1845, regulating conveyances, the court said that apt words of grant in the body of the deed were unnecessary, as the wife was required to join her husband in the deed, not to transfer title from her, but merely to extinguish her contingent right of dower.

When Mrs. Lynn and her husband executed their deed in 1856, the latter had the rights which the common law gave him in his wife's real estate in Illinois. He was entitled to the rents and profits during their joint lives, and a life-estate thereafter if he survived his wife. While his rights differed in some material respects from the inchoate right of dower, still the reasoning in this case tends to support the deed under consideration.

In Miller v. Shaw, 103 Ill. 277, the court was required to pass upon the validity of a married woman's deed for her separate property in Illinois; the husband having signed and acknowledged the deed, his name not appearing, however, in the granting clause. The statute in force at the time (section 21 of the act of 1845), provided that when any husband and wife residing in this State wished to convey the real estate of the wife, it should be lawful for the husband and wife, she being above the age of eighteen years, to do so by the execution of their joint deed; the wife being required to appear before some judge, or other officer authorized to take acknowledgments of such instruments, and acknowledge the same, being previously made acquainted with the contents. A deed thus executed and acknowledged the statute declared to be as effective as if executed by the wife before marriage. The court held that this was a valid deed under the statute, and bound both the wife and husband.

In Yocum v. Lovell, recently decided by the Supreme Court of Illinois, but not yet reported, it was held that a deed signed and acknowledged by husband and wife, was sufficient to extinguish the homestead right of both, though the wife's name did not appear in the granting clause or elsewhere in the body of the deed. The court say that section 4, c. 53, Rev. St. 1874, declared that no release, waiver, or conveyance of the homestead should be valid, unless the same was in writing, subscribed by the householder and his wife, and acknowledged as required in the execution of deeds conveying real estate, and that the statute was substantially complied with.

Judgments will be entered for the defendants in the three cases.

NOTE.—*Married Women—Conveyance of Real Estate—Joint Grantors.*—It has been said that, since by the principle of the common law, a wife can do no valid act without the concurrence of her husband, who performs the duty of a sort of guardian over her, the husband must always join with the wife in the grant of her real estate to make her statutory conveyance good, unless the statute, either in express words or by necessary implication, renders such joining unnecessary.[1] A married woman can convey her separate estate only by pursuing strictly the method prescribed by statute.[2] For when regulations are prescribed by statute, and they constitute the apparent policy and object of such statute, not even courts of equity can dispense with their observance, or remedy their omission.[3]

1. *Apt Words of Conveyance.*—In order to convey by grant, the party possessing the right must be the grantor, and use apt words to convey to the grantee.[4] Consequently, where the title to the land is in a married woman, the recital in the deed of the husband alone as grantor is insufficient to convey the title of the wife.[5] The interest of the husband is all that would be conveyed by such a deed, although it were signed, sealed and acknowledged by the wife.[6] If the title to land is in a married woman, and a deed of the land recites the name of the husband as grantor, pur-

1 1 Bish. Mar. Woman. § 593.

2 Gillespie v. Worford, 2 Cold. 632; Tucker v. Carr, 39 Tex. 98.

3 Hammond v. Thompson, 56 Ala. 589; 1 Story Eq. Jur. § 96.

4 Agricultural Bank v. Rice, 4 How. 225.

5 Id.

6 Agricultural Bank v. Rice. 4 How. 325; Meegan v. Boyle, 19 How. 130; Powell v. Monson & B. M'f'g. Co., 3 Mason 347; Shortall v. Hinkley, 31 Ill. 219; Still v. Swan, Litt, Sel. Cas. (Ky.) 155; Miller v. Shackleford, 3 Dana 289; Payne v. Parker, 10 Me. 178; Fowler v. Shearer, 7 Mass. 14; Lithgow v, Kavenagh, 9 Mass. 161; Bruce v. Wood, 1 Metc. 542; Williams v. Christie. 4 Duer 29; Kerns v. Peeler, 4 Jones (N. C.) L. 226; Newcomb v. Smith, Wright (Ohio) 208; Mayo v. Feaster, 2 McCord Ch. 137.

porting to convey the right of the wife, the deed is insufficient to convey her title.[7] Judge Story says in Powell v. Monson & B. Mfg. Co.,[8] that "a deed cannot bind a party sealing it unless it contains apt words expressive of an intention to be bound." To pass the wife's estate, there must be apt words employed by her conveying it; it is not sufficient for the husband alone to use such words, though he unite with her in the deed, and the two execute and acknowledge it with all due formality.[9] It is said by Judge Story in the case of Powell v. Monson & B. Mfg. Co., last cited, that though by the Massachusetts local law, a wife, by joining with her husband in a deed, could convey her estate, "yet the deed must contain apt words to make her a grantor, otherwise the deed conveys only the right of the husband. This point has been expressly decided by the Supreme Court of this State (Massachusetts)[10] and, in my humble judgment, with entire correctness."

2. *In Illinois.*—It has been held that in Illinois a married woman cannot, except by special enactment, convey her real estate.[11] Prior to March 27, 1869, it was only by the husband joining in the execution of the deed, and a certificate showing an acknowledgement in compliance with the statutory requirement, that the wife could convey real estate.[12] A statute of Illinois passed February 22, 1847, provided that "when any *feme covert*, not residing in this State, shall join with her husband in the execution of any deed of lands within this State, she shall be barred of and from all estate therein in like manner as if she was a sole, and the acknowledgment may be in the same form as if she were a sole.[13] It is said that where the statute enables a married woman to convey her real estate by joining her husband with her in the deed for that purpose, to be effectual, the deed must be properly executed and the statute strictly complied with.[14] To render the conveyance valid the husband must be joined with the wife in the deed.[15] In Johnson v. Montgomery,[16] decided at the September term, 1869, the Supreme Court of Illinois, in passing on a case where a resident of Ohio executed a deed to certain lands in Illinois, which deed was signed by the wife with her husband, and duly acknowledged before a proper officer, and the certificate in all respects conformed to the requirements of the law, but the wife was not described in the body of the deed as a grantor, nor her name or her dower mentioned in any manner whatever, and this was held to be a sufficient "joining" with her husband under the statute of 1847 to amount to a complete and valid relinquishment of her dower. The court say: "Whether the deed contain apt words of grant, used on the part of the wife for the purpose of passing an estate or interest, has never, to our knowledge, been made a question. It has always been held sufficient if the wife signed the deed with her husband and properly acknowledged it. * * * We are wholly unable to appreciate the importance of apt words of grant, to be used by the wife in the body of the deed for the purpose of cutting off her dower, when, in fact, she is not possessed of an estate in the land which is susceptible of conveyance, but merely of a contingent interest, which can only be released for the purpose of being merged in the fee. As was held in the recent case of Robbins v. Kinzie,[17] "an inchoate right of dower cannot be said to be a present estate or interest in lands." Why, then should she be required to use, in her own name, apt words of grant, and apply them in the body of the deed to her right of dower, when in fact no estate passes from her to the grantee, and she signs and acknowledges the deed merely to show her free assent to her husband's conveyance of his property, to be held by his grantee free from any claim by her under her contingent right of dower? The legislature might, if they had thought proper, have provided that her assent be shown by an examination before the officer merely, and his certificate of that fact, without her signing the deed at all, and that her assent to her husbands conveyance, thus evidenced, should bar her dower. That the legislature did not consider that she must be named in the deed, and use therein apt words of conveyance, or that she was in fact conveying anything, is clear from the language used at the end of the twenty-first section of the conveyance act, where they describe the effect of the deed properly executed and certified, not as passing an estate to the husband's grantee, but as discharging and barring her dower. The deed transfers no title from the wife,—it merely extinguishes a contingent right."

In Hagan v. Hagan,[18] decided at September term, 1878, it was said by the court that "under the statute, it was only in the precise mode prescribed thereby—by the husband joining in the execution of the deed, and by a certificate showing an acknowledgement in substantial compliance with the statutory requirement—that the wife could convey her real estate. It was the acknowledgement of the *feme covert* which was the operative act to pass the title, and not the delivery of the deed; and an instrument relating to the conveyance of the wife's real estate in which the husband did not join was held to be void. In the case of Miller v. Shaw,[19] it is said that all that was required by the law in force in 1867, to enable a married woman to convey her real estate, that she and her husband should execute the deed, after which she should appear before a proper officer and acknowledge the same in the mode pointed out in the statute; and such deed being acknowledged by the husband, or his execution thereof proven according to law, is effectual to pass the title to the wife's separate property. In this case, in the beginning of the deed, where the parties to it are first stated, it is said: "L. Martha Sheldon, in her own right, wife of Seth Sheldon, Jr.," and this was held by the court to be a joining as grantor, and within the provision of the statute. The court intimate in this case that, if the husband sign the deed, and acknowledge it according to law, that this will be sufficient to pass title without his joining in the granting clause.

3. *Joint Grantors.*—In Peabody v. Hewett,[20] it is held that when one, jointly with others, signs, seals,

7 Agricultural Bank v. Rice, 4 How. 225.
8 3 Mason 367.
9 Lithgow v. Kavenagh, 9 Mass. 161; Mayo v. Feaster, 2 McCord Ch. 137; Sharpe v. Bailey, 14 Iowa, 387; Kerns v. Peeler, 4 Jones, (N. C.) L. 226; Foster v. Dennison, 9 Ohio, 121; Purcell v. Goshorn, 17 Ohio, 105; Bruce v. Wood, 1 Metc. 542; Payne v. Parker, 10 Metc. 178; Cincinnati v. Newell, 7 Ohio St. 97; Hughes v. Wilkinson, 21 Ala. 296; Powell v. Monson & B. M'f'g. Co., 3 Mason, 367.
10 Fowler v. Shearer, 7 Mass. 14; Lithgow v. Kavenagh, 9 Mass. 161; Catlin v. Ware, 9 Mass. 218; Lufkin v. Curtis, 13 Mass. 223,
11 Lane v. Soulard, 15 Ill. 123.
12 Bradshaw v. Atkins, 110 Ill. 323.
13 2 Scates, T. & B. Stats. (Cook's Ed.) 965; Gross' Stats. 88, § 24.
14 Moulton v. Hurd, 20 Ill. 137. See Russell v. Rumsey, 35 Ill. 362.
15 See Cole v Van Riper, 44 Ill. 58; Bressler v. Kent, 61 Ill. 426; Lewis v. Graves, 84 Ill. 206; Trustees v. Davison, 65 Ill. 175.
16 54 Ill. 185.
17 45 Ill. 357.
18 89 Ill. 427.
19 103 Ill. 277.
20 52 Me. 33.

and delivers an instrument supposed to be a perfect deed, but his name appears in no other part thereof, his interest in the premises described in such instrument is not thereby conveyed. The court say: According to 2 Bl. Com. 297, the matter of a deed must be legally and orderly set forth; that is, there must be words sufficient to specify the agreement and bind the parties. It is not absolutely necessary, in law, to have all the formal parts that are usually drawn out in the deeds, so there be sufficient words to declare clearly and logically the party's meaning. In Catlin v. Ware,[21] it is said by the court that "a deed cannot bind a party making it, unless it contain words expressive of the intent to be bound." This was a case in which William Peabody, one of the heirs of Solomon Peabody, signed and sealed an instrument, supposed to be a perfect deed, to Sarah N. Patten conveying his interest as an heir of said Solomon Peabody in certain lands named, but his name appeared in no part of the deed, and it was denied that any part of the premises passed by it. It is said in Chapman v. Crooks,[22] that the recital in a deed that it is made at the request and by the consent of certain persons, does not pass any legal title such persons may have in the premises described, even though they also sign the deed. This was an action in ejectment, in which the deed under which the land was held purported to be made by F. B., sole qualified and acting executor of the estate of A. B., and at the request of F. and S., who executed it together with the executor F. B. The court say: "The recital in the deed and the signatures of Sheldon and Fitts thereto, would not make it their deed, or pass any legal title which they may have had in the premises."

a. *Husband Joining with Wife.*—Where the separate property of the wife may be sold and conveyed by the husband and wife jointly, the husband must join in the deed.[23] And where he simply joins in the acknowledgment, the deed is void.[24] The acknowledgment of a deed is not one of the constituent parts of the instrument, and does not meet the requirements of the statute.[25] The husband must be a grantor with the wife.[26]

It has been said that where a husband is required to join with his wife in the conveyance of lands, a married woman cannot convey her inheritance where nothing passed from the husband; and that where the deed, as to the husband, is a nullity, it will not convey or pass the title or estate of the wife in the lands therein mentioned, although her acknowledgment thereto be in due form of law.[27]

(1.) *In Alabama.*—By an Alabama statute it is provided that "the property of the wife, or any part thereof, may be sold by the husband and wife, and conveyed by them jointly, by instrument of writing attested by two witnesses."[28] A long line of decisions in this State hold that the conveyance can only be effected by a joint deed of the parties.[29] In Hammond v. Thompson,[30] the court hold that where a deed is executed by the wife alone, using words of conveyance, and reciting that she is a married woman, and her husband executes another instrument under seal, on the same paper, and at the same time declaring that he "does consent," etc., that this is the deed of the wife only, and does not comply with the requirements of the statute. The court say: "The provision of the Code as to the sale of the wife's property is obviously restrictive, and doubtless intended to prohibit any sale of the wife's property, except such as might be made by the husband and wife,[31] and such conveyance can be effected by her and her husband jointly, by instrument of writing."[32] It is said in the case of Blythe v. Dargin,[33] decided at the December term, 1880, that a conveyance by a married woman, of lands belonging to her as her statutory separate estate, executed by her in the presence of two witnesses, and acknowledged before and certified by a justice of the peace, signed by the husband, but in which he is not named as a grantor, and which contains no words of conveyance passing or evidencing an intention to pass his estate or interest in the lands, is merely the void deed of the wife, to which the husband was not a party, and to which his concurrence was not expressed in the mode prescribed by the statute; and it cannot be enforced in a court of equity as a contract to convey, although the purchase money has been paid, and possession taken and continued by the purchaser thereunder for the period of five years. The court say: "The legal title to the *corpus* of the estate resides in the wife, and in the husband resides only the right to manage and control it, taking the rents and profits as trustee, free from the liability to account for them. The wife is not *sui juris*. The disabilities of coverture imposed by the common law remain, save in so far as they are modified. In no respect is her capacity to contract enlarged or modified, except in relation to the alienation and conveyance of the estate. In that respect the statute is enabling, and, without conforming to its requisitions, the wife cannot alienate or convey her estate."[34]

(2.) *In Indiana.*—It was decided by the Supreme Court of Indiana in the case of Baxter v. Bodkin,[35] that under a statute providing that "the joint deed of the husband and wife shall be sufficient to convey and pass the lands of the wife, but not to bind her to any covenant therein," that separate deeds executed by the husband and wife respectively, with the husband's oral consent to the wife's act, do not together constitute a joining, or a fulfillment of the statute.

(3.) *In Maine.*—Whether in Maine any title passes by merely signing and delivering a deed, without the insertion of the name as a grantor, *quære*.[36]

21 9 Mass. 218.

22 41 Mich. 595; s. c., 2 N. W. Rep. 924.

23 Elzeile v. Parker, 41 Miss. 520.

24 Alexander v. Saulsbury, 37 Ala. 375; Fowler v. Shearer, 7 Mass. 14; Elzeile v. Parker, 14 Miss. 520; Dunham v. Wright, 53 Pa. St. 167; Jewett v. Davis, 10 Allen, 68; Martin v. Dwelly, 6 Wend. 11.

25 Brown v. McCormick, 28 Mich. 215.

26 Leavitt v. Lampry, 13 Pick. 382; Lufkin v. Curtis, 13 Mass. 223; Catlin v. Ware, 9 Mass. 218; Jewett v. Davis, 10 Allen 70; Bruce v. Wood, 1 Metc. 542; Warner v. Peck, 11 R. I. 431; McFarland v. Febiger, 7 Ohio 194; Purcell v. Goshorn, 17 Ohio 123; Kerns v. Peeler, 4 Jones (N. C.) L. 226; Gray v. Mathis, 7 Jones (N. C.) L. 502; Hammond v. Thompson, 56 Ala. 591; Agricultural Bank v. Rice, 4 How. 241; Lawrence v. Heister, 3 Har. & J. (Md.) 371; Baxter v. Bodkin, 25 Ind. 172; Cox v. Wells, 7 Blackf. 410; Hedger v. Ward, 15 B. Mon. 106.

27 See 1 Bl. Con. 442, 445, 468; 1 Bac. Abr. tit. "Baron and Feme," (C) 476, 467; 4 Vin. Adr. tit. "Baron and Feme." (P) 66; Jac. L. Dict. tits. "Deed," "Conveyance." "Feoffment;" Co. Litt. 327h; Nicholson's Lessee v. Hemsley, 3 Har. & McH. 409.

28 Rev. Code, § 1552.

29 George v. Goldsby, 23 Ala. 326; Hughes v. Wilkinson, 21 Ala, 296; Beene v. Randall, 23 Ala. 514; Boykin v. Rain, 28 Ala. 332; McBryde v. Wilkinson, 29 Ala. 662; Alabama Life Ins. & Truss Co. v. Boykin, 38 Ala. 510; Warfield v. Ravesies, 38 Ala. 524.

30 56 Ala. 589.

31 Smyth v. Oliver, 31 Ala. 39.

32 Warfield v. Ravesies, 38 Ala. 518. See also, Northington v. Faber, 52 Ala. 45, and Coleman v. Smith, 55 Ala. 368.

33 68 Ala. 370.

34 Gibson v. Marquis, 29 Ala. 668; Canty v. Sanderford, 37 Ala. 91; Alexander v. Saulesbury, 37 Ala. 375; Warfield v. Ravesies, 38 Ala. 518.

35 25 Ind. 172.

36 Bird v. Bird, 40 Me. 398.

(4.) *In Maryland.*—The Supreme Court of Maryland in the case of Lawrence v. Heister,[37] held that under a statute enabling a married woman to convey her land by her husband joining with her in the deed, "to pass the interest of the wife in her land, the husband and wife must join in the deed as grantors, or the deed cannot be legally efficient."

(5.) *In Massachusetts.*—It was held in Fowler v. Shearer,[38] that a woman may pass her own land by a deed executed by her jointly with her husband.[39] And in the later case of Jewett v. Davis,[40] it was held that under the statute a married woman, to whom real estate had been conveyed, without words expressing that it was to be held by her to her sole and separate use, could not make a valid conveyance thereof without her husband's joining as a grantor. The court say: "By the well-settled principles of the common law, as long held and practiced upon in this commonwealth, and subsequently confirmed by Rev. St. c. 59, sec. 2, a *feme covert* who owns the fee of land can convey the same only by a deed executed by herself and her husband, and when both are parties to the effective and operative part of the instrument of conveyance.[41]

(6.) *In Mississippi.*—It was held in Stone v. Montgomery,[42] that a deed which purports on its face to be the separate conveyance of her estate by the wife, with the consent of her husband, and the deed is signed and sealed and acknowledged by both of them, is good notwithstanding the husband does not appear in the body of the deed as a grantor. The court say: "He signed the deed, and acknowledged it as his act and deed, for the purposes stated in it. That was sufficient to show his consent and co-operation in the conveyance in the most certain form, and the reason of the statute, in requiring the conveyance to be made the joint deed of the husband and wife, is that it may be made with his aid and consent. His signing, acknowledgment and delivery of the deed would estop him from setting up any claim to the property against the grantee, and show that the title of his wife was conveyed by his co-operation. Under such circumstances the deed is sufficient, under the statute, to convey the wife's estate."[43]

7. *In New Hampshire.*—In Woodward v. Seaver,[44] it was held that where a deed of the wife's land purports to be the conveyance of the wife alone, and contains no recital that the husband is a party, but is executed by the husband and wife, it is the deed of both, and passes the title of both. In this case the court follow the doctrine of the same court set forth in Elliot v. Sleeper.[45] The latter was the first case in the country holding that a mere signing, sealing and acknowledgement on the part of the husband is sufficient joining, and seems in conflict with the current of opinion in other States, but is in harmony with the conclusion reached in the principal case. We quote freely from the opinion. The court say: "The second objection is that nothing passed by the mortgage on the ground that Nathanial Brown is not named in the body of the deed as one of the grantors. The usage among us for a wife to pass her title to land by a deed, in which she is joined by her husband, has been before investigated in this court in the case of Gordon v. Haywood;[46] and for the purposes of our present inquiry, it may be admitted that the usage, however diversified in its forms, always requires the husband and wife to so far join as to convey at the same time, on the same paper, and both in language suitable to pass the title to real estate. Whether this requisition has here been fulfilled is a question of some difficulty, on both authority and principle. It cannot be doubted that the signature, sealing, and acknowledgement of the deed by the husband, being on the same paper with those of the wife, and in the usual form, are in themselves sufficient. But it is objected that he is not named in the deed as a grantor, and that, without being so named, the deed is not his deed, and in respect to him is altogether inoperative. But it seems well settled that whoever signs and delivers an unsealed writing is bound by the promises contained in it, although his name may not appear in the paper, except in his signature.[47] This seems founded on the obvious and reasonable principle that such acts amount to an adoption of all which preceeds the signature, and that no other legitimate cause for these acts can be assigned than a design to make all the promises to which the signature is affixed the promises of the subscriber. * * * * In sealed instruments, such as bonds, and wills, the same principle applies, and appears to be supported by numerous authorities.[48] * * In respect to deeds of conveyance, an impression seems to have prevailed against the application of the principle. It is said to be the province of the premises to name, among other things, both the grantor and the grantee.[49] So rigid has been the adherence to this rule that it was long doubted whether a deed was valid if the name of the grantor was omitted from the premises, although it appeared in the *habendum*.[50] But these doubts have been overruled.[51] Because every deed must, if possible, be made operative.[52] And cases exist where almost every formal part of a deed has been dispensed with.[53] Indeed, writing, sealing, and delivery have been pronounced the only essentials.[54] Here, however, a deed must by statute be attested; and since seals have ceased to be distinguished by peculiar devices, and education has become more generally diffused, signing would seem to be proper and indispensible. When a deed is signed, the utility of naming the grantor in the premises, or any part of the body of the instrument, appears in a great measure suspended. For "know," says Perkins[55] "that the name of the grantor is not put in the deed to any other intent but to make certain the grantor."[56] This certainty is attained whenever a person signs, seals, acknowledges, and delivers an instrument as his deed, though no mention whatever is made of him in the body of it. Because he can perform these acts for no other possible purpose than to make the deed his own."[57] But in this case the husband's name was recited in the premises as the husband of

[37] 3 Har. & J. 371.
[38] 7 Mass. 14.
[39] See also, Stearns v. Swift, 8 pick. 532; Leavitt v. Lamphry, 13 Pick. 382.
[40] 92 Mass. 68.
[41] Lithgow v. Kavenagh, 9 Mass. 161; Bruce v. Wood, 1 Metc. 542; Concord Bank v. Bellis, 10 Cush. 276.
[42] 35 Miss. 83.
[43] See Armstrong v. Stovall, 26 Miss. 275.
[44] 38 N. H. 29.
[45] 2 N. H. 525.
[46] 2 N. H. 402.
[47] Little v. Weston, 1 Mass. 156; Fisher v. Leslie, 1 Esp. 426.
[48] Citing, 2 Leon. 35; 3 Leon. 79; 4 Leon, 104; Peck. §§ 59, 119, 158; Smith v. Crooker, 5 Mass. 540; Zouch v. Clay, 1 Vent. 185; Nur e v. Frampton, 1 Salk. 214; Com. Dig. tit. "Fait," C. 2. See *contra*, Crosby v. Middleton, Finch, 309.
[49] Co. Litt. 6*a*; Shep. Touch. 52.
[50] Co. Litt. 27*a*, note 4.
[51] Lord Say & Seal's Case, 10 Mod. 46; Spyve v. Topham, 3 East, 113; Eeles v. Lambert, Aleyn, 38, 41; Trethewy v. Ellesdon, 2 Vent. 141.
[52] Langdon v. Goole, 3 Lev. 22.
[53] Shep. Touch. 54; Co. Litt. 7*a*; Bridge v. Wellington, 1 Mass. 219; Com. Dig. tit. "Fait," E 3.
[54] Com. Dig. tit, "Fait," A; Shep. Touch. 60.
[55] Perkins' Conv. § 36.
[56] See also, Bac. Abr. tit. "Grant," C.
[57] Perk. Con. §§ 59. 159.

the grantor, and the court say: "It is impossible to shut our eyes upon the recital in the deed that Mary Brown is the wife of Nathanial Brown, and that Nathanial Brown must in law join with her in the conveyance to render it operative. For this reason he executed and delivered the deed as his, and now to hold it not to be his, would contradict both his acts and his manifest intent, as well as sound analogy derived from the principles and cases before mentioned."

8. *In Rhode Island.*—A statute being in force providing that "where the husband and wife, being of lawful age, are seized of any lands, tenements, or other real estate in the right of the wife, they shall be authorized to convey the same by deed or other instrument in writing, signed, sealed, and delivered by them, respectively," a deed was given, drawn as the individual deed of a married waman, throughout the premises, granting and conveying parts down to the attestation clause, which was in the words: "In testimony whereof, we have hereunto set our hands and seals, this 11th day of April, A. D. 1867." The deed was signed, sealed and acknowledged by both husband and wife, the wife's acknowledgment being separately taken as required by statute. The deed was held to be a nullity.[58] The court say in this case, after referring to or quoting Jewett v. Davis,[59] Gray v. Mathis,[60] Bruce v. Wood,[61] Kerns v. Peeler,[62] Purcell v. Goshorn,[63] Catlin v. Ware,[64] Lufkin v. Curtis,[65] Cox v. Wells,[66] and Powell v. Monson Ma'f'g Co.,[67] said: "We think these decisions are founded in reason. For how can a deed which is expressed solely in the name of one person become the deed of another person by his simply affixing to it his signature and seal? The maxim of the law is, *expressio unius, exclusio alterius.* Let us look at the case in question. The sole grantor named in the body of the deed is the wife. The deed runs, "I, Mary E. Huddleston," etc., throughout the granting and covenanting parts. Then follows; "in testimony whereof, we have hereunto set our hands and seals." In testimony of what? Manifestly in testimony of the grant and covenants expressed in the body of the instrument. It is true they are null and void; but they cannot be construed as the joint grant of the husband and wife, with covenants by the husband, simply because, unless so constructed, they are, without effect. That would be to make for the husband and wife a deed which they have not made for themselves."

9. *In South Carolina.*— In the case of Gray v. Mathis,[68] the Supreme Court of South Carolina held that where a *feme covert*, having a life estate in land, made a deed purporting to convey it in her own name, without that of her husband being in the body, but affixed after the signature of the wife, that the deed was void as to her on accouut of coveture, and as to her husband, because not a party to it; and that no privy examination could give validity to such an instrument, The court say: "The husbands are not mentioned in the deed as parties to it, and they could not become so by adding their signatures and seals to those of their respective wives. If this doctrine needed authority, it is found in the cases referred to by defendant's counsel.[69]

b. *Wife Joining with Husband.*—Judge Story held, in Powell v. Monson & B. M'f'g. Co.,[70] that a deed of land executed by husband and wife, but containing no words of grant by the wife, does not convey her estate in the land, nor her dower.

(1.) *In Massachusetts.*—It has been held in Massachusetts that a deed to land executed by husband and wife, without any words of grant or warranty on the part of the wife, does not pass her interest in the land.[71] It is held in Catlin v. Ware,[72] that when, to a conveyance of land by her husband, the wife affixes her signature and seal, her name not being otherwise mentioned in the deed, that she had not thereby barred herself of her right to dower. The court say: "A deed cannot bind a party signing it unless it contains words expressive of an intention to be bound. In this case, whatever may be conceived of the intention of the demandant in signing and sealing the deed, there are no words implying her intention to release her right of dower. It was said in Lufkin v. Curtis,[73] that, in a conveyance by a married man, words of release by the wife are necessary to bar her of her dower. It is not sufficient that she executes and acknowledges the deed, her name being introduced only in the conclusion, and the purpose of her signing and sealing not being declared. In Leavitt v. Lamprey,[74] the wife had not joined except by signing, sealing, and acknowledging the instrument in due form. The court say: "Her right is not barred by her husband's deed to Goddard, in which she joined; for it contains release of her right, nor words of conveyance by her; * * * nor can her assent thus given operate against her by way of estoppel. We are not to enquire what was her motive and intention in joining in a deed with her husband, for her right of dower is not to be barred by any supposed intention not manifested by the words of the deed."

(2). *In Missouri.*—In Missouri, in an instrument in the form of an indenture conveying land held by a married woman in her own right, but not her separate estate, where the husband and wife were both mentioned as parties of the first part, and the deed was duly acknowledged by both, but the name of the wife did not appear otherwise, and the husband only was named as grantor, it was held that the instrument did not even amount to an equitable charge on her estate.[75]

(3.) *In Ohio.*—In an early Ohio case, where the wife was named, only in the clause describing the parties, and in the attesting clause of a deed, the covenants all being by the husband alone, and no terms employed touching the wife's contingent estate of dower, it was held that the wife was not concluded, though she joined in the formal execution of the deed.[76] A *feme covert*, owner of the fee of the land, does not pass her title by a deed executed by the husband and the wife, unless she joins her husband in the granting part of the deed.[77]

(4.) *In New Hampshire.*—But the New Hampshire court, in harmony with the doctrine heretofore set

58 Warren v. Peck, 11 R. I. 431.
59 92 Mass. 68.
60 7 Jones' (N. C.) L. 502.
61 1 Metc. 542.
62 4 Jones' (N. C.) L. 226.
63 17 Ohio 105.
64 9 Mass. 218.
65 13 Mass. 223.
66 7 Blackf. 410.
67 3 Mason 347.
68 7 Jones (N. C.) L. 502.
69 Lufkin v. Curtis, 13 Mass. 223; Catlin v. Ware, 9 Mass. 217; 2 Cruise, Dig. 260, note 2; and Kerns v. Peeler, 4 Jones (N. C.) L. 226.
70 3 Mason, 367.
71 Melvin v. Proprietors of Locks & Canals, etc., 16 Pick. 137.
72 9 Mass. 218.
73 13 Mass. 223.
74 13 Pick. 382.
75 Whiteley v. Stewart, 63 Mo. 360. See Shroyer v. Nickell, 55 Mo. 264.
76 McFarland v. Febiger's Heirs, 7 Ohio 194.
77 Purcell v. Goshorn, 17 Ohio 105.

forth,[78] hold that, where the wife signs and seals the deed of the husband, it is sufficient to bar her claim of dower, though no mention is made of her in the body of the deed.[79]

c. *What a Joining Within the Meaning of the Statute.*—Judge Story held in the case of Powell v. Monson & B. Mfg. Co.,[80] that the joining of the husband with the wife in the conveyance of the wife's real estate did not comply with the conditions of the statute requiring her to join with him. It was held by the Supreme Court of Alabama, in the case of Harrison v. Simons,[81] that where several persons are named in a deed as grantors, and their signatures and seals are affixed to it, another person who is not named in it, although his signature and seal are affixed to the instrument, is not one of the grantors, and the deed does not pass his interest in the land. This was a case where the deed mentioned the names of three of the signers as grantors, and was silent as to the other signer. The court say: "The persons named in the deed as grantors, by signing and sealing it, declare and make known, to all whom it may concern, that they respectively bargain, enfeoff, and convey the land therein described to Thomas J. Harrison, and that they covenant with him that they are seized in fee, and have a right to sell and convey the land, and that they will warrant and defend the title. But what is declared or certified by the signature and seal of A. L. Barnett? Can they import anything else than is contained in the deed, to-wit, that the persons described in it as grantors convey and covenant as above? It is not set forth in the deed that A. L. Barnett himself does or shall do any of these things; and we cannot attribute any efficacy or meaning to his mere signature and seal, apart or different from what is expressed in the instrument to which they are affixed. This is in substance what was decided by the Supreme Court of the United States in Agricultural Bank v. Rice.[82] Property belonging to married women had been bargained to purchasers by an executory contract, signed and sealed by the husbands and wives jointly, set forth that the husbands, in right of their wives, conveyed the property. This deed was signed and sealed by the husbands and wives jointly, and they all acknowledged, the wives separately and apart from their husbands, that they signed, sealed, and delivered it as their act and deed. Taney, C. J., delivering the opinion of the court, said: 'It is altogether the act of the husbands, and they alone convey. Now, in order to convey by grant, the party possessing the right must be the grantor, and use apt and proper words to convey to the grantee, and merely signing, sealing, and acknowledging an instrument, in which another person is the grantor, is not sufficient.'

As would be expected from what has heretofore been said, the New Hampshire court hold that where the land belonged to the wife, and the deed purported to be her sole conveyance, but was signed and sealed by her and her husband, this is a sufficient joining under the statute.[83]

4. *Husband as Grantor of Wife's Land.*—It has been held that a husband's deed, purporting to convey his wife's estate in fee, is ineffectual to do so, notwithstanding the fact that she signed, sealed and acknowledged it with him, if she is not also joined with him in the granting part.[84] The simple signing and sealing of the deed by the wife is not a proper joinder, and will not convey any of her interests: To constitute a proper joinder, and to bar dower, the deed itself must contain words necessary to constitute a conveyance or release.[85]

a. *In United States Courts.*—It was held by the Supreme Court of the United States in Agricultural Bank v. Rice,[86] that where the title to land was in married women, and a deed therefore recited the names of the husbands as grantors, purporting to convey the title of the wives, that the deed conveyed only the interest of the husbands, notwithstanding the fact that the deed had been signed, sealed and properly acknowledged by the wives.

b. *In Massachusetts.*—It was held by the Massachusetts Supreme Judicial Court in Bruce v. Wood,[87] that where a husband, by a deed in his own name, conveyed his wife's land in fee, and she merely affixed her signature and seal to the deed, "in token of her relinquishment of all her rights in the bargained premises," her right in fee is not thereby conveyed, and she, after the decease of her husband, may maintain a writ of entry, on her own seizin, to recover the land. The court say: "It must appear that both husband and wife were parties to the efficient and operative parts of the instrument of conveyance; it is not sufficient that her name was annexed, as expressing her assent to the act of her husband, and without words showing her formal participation in the granting part of the deed."[88]

c. *In North Carolina.*—In Kerns v. Peeler,[89] the Supreme Court of North Carolina held that a deed executed by the husband, for land belonging to the wife, his own name only being inserted in the several parts of the body of the deed, which is subsequently signed and sealed by the wife, and her privy examination taken, does not pass the estate of the wife. This is a case where the fee was in the wife, but she was not made a grantor in the deed, and her name did not appear in the body of the instrument, but was properly signed, sealed and acknowledged by her. The court say: "Did her signing and sealing the deed, under these circumstances, make her a party to it? We are of the opinion that it did not; * * * * for all the purposes of a conveyance she might as well have signed and sealed a blank piece of paper."

d. *In Kentucky.*—In Hedger v. Ward,[90] the wife had signed a deed purporting to convey, on the part of the husband, land which was the inheritance of the wife, and acknowledged the deed and relinquished dower in the land; and it was held that such a deed is ineffectual to pass the inheritance of the wife, as the deed contained no language indicating any intention to convey her right of inheritance. The court say: "The husband is the sole grantor in the deed. It purports to be a sale and conveyance of his land, and not the land of his wife, and does not contain any language indicating an intention that she was to convey her right of inheritance to the land. Indeed, it may be inferred, from the manner in which the deed was drawn, executed, and certified, that relinquishment of dower on the part of the wife was all that was intended to be done by her. * * * Would the deed in question have been sufficient to convey the wife's right of in-

[78] See *supra* 3, a (7).

[79] Burge v Smith, 27 N. H. 332.

[80] 3 Mason 347, 355.

[81] 55 Ala. 510.

[82] 4 How. 225.

[83] Elliot v. Sleeper, 2 N. H. 525.

[84] Bruce v. Wood, 1 Metc. 542; Kerns v. Peeler, 4 Jones (N. C.) L. 266; Purcell v. Goshorn, 17 Ohio 105; Cox v. Wells, 7 Black. 410.

[85] Davis v. Bartholomew, 3 Ind. 485. See 4 Kent Com. 59.

[86] 4 How. 225.

[87] 1 Metc. 542.

[88] Citing Lithgow v. Kavenagh, 9 Mass. 161; Powell v. Monson & B. M'f'g Co., 3 Mason, 347; Lufkin v. Curtis, 13 Mass. 223.

[89] 4 Jones (N. C.) L. 227.

[90] 15 B. Mon. 106.

heritance to the land, even if it had been acknowledged by her for that purpose? * * * It is evident that, to enable a wife to convey her title to land, she must join with her husband in a deed containing apt words of grant, and purporting to be a conveyance by her as well as her husband."

5. *Dower.*—It has been held that a wife does not release her right of dower in land conveyed by her husband by simply signing, sealing, and acknowledging his deed, if it had no words of release or relinquishment on her part.[91]

a. *Distinction between, in Dower and Fee.*—There is a distinction between the relinquishment of dower and the granting of a fee. The court say, in Lane v. Dolick,[92] that "if the acknowledgement only contains a relinquishment of dower, it is not sufficient to pass the estate in fee." And in Missouri, under a statute like the Illinois statute passed on in the principal case, it was held insufficient, although the acknowledgement would have been ample without the relinquishment of dower.[93] In Leavitt v. Lamprey,[94] the only words relating to the wife in a deed executed by the husband and wife were: "In witness whereof, I, the said S. F. L., with S., my wife, in token of her assent thereto, have hereunto set our hands and seals," and it was held that the wife's right of dower was not released. The court say: "Her right is not barred by her deed to Goddard, in which she joined, for it contains no release of her right, nor words of conveyance by her, she only assents to the correction of a mistake in a former deed of her husband, to which she was a party. Nor can her assent thus given operate against her by way of estoppel. We are not to inquire what was her motive and intention in joining in a deed with her husband, for her right of dower is not barred by any supposed intention not manifested by the words of the deed; and thus it was decided in Catlin v. Ware,[95] and in Lufkin v. Curtis."[96] It is said by the Supreme Court of the United States, in the case of Dundas v. Hitchcock,[97] that usually the initiate and contingent right of dower is barred, in deeds of sale and mortgage, by a conveyance making the grant in the joint names of the husband and wife, in the same manner as if the estate belonged to the wife; the deed operating by way of estoppel, when the right of dower becomes complete by the death of the husband. But when the legal right is vested wholly in the husband, and the right of the wife is but a contingent incumbrance, there is no necessity that she should join in the grant of the fee; the release of her inchoate right, acknowledged in due form, being all that is necessary to bar her from setting up a claim of dower after the death of her husband. In Tirrel v. Kinney,[98] where a wife joined with her husband in a mortgage of land, "in order to release her rights under the homestead exemption act," it was held that this did not release her right to dower. The court say: "This is not the operation of a release, in whatever form of words it may be made. Like the release of dower, it operates, not to convey the right of another, but by way of estoppel or extinguishment of the right, so as to bar any future claim."[99]

JAS. M. KERR.

St. Paul, Minn.

91 Catlin v. Ware, 9 Mass. 218; Lufkin v. Curtis, 13 Mass. 223; Cox v, Wells. 7 Blackf. 410; Powell v. Monson & B. Ma'f'g Co., 3 Mason, 347.

92 6 McLean, 200.

93 McDaniel v. Priest, 12 Mo. 545. See Gregory v. Ford, 5 B. Mon. 482; Tevis v. Richardson, 7 T. B. Mon. 661; Barnett v. Shackleford, 6 J. J. Marsh 532; Powell v. Monson & B. Ma'f'g Co., 3 Mason, 347; Raymond v. Holden, 2 Cush. 264; Bruce v. Wood, 1 Metc. 542.

94 13 Pick. 382.

95 9 Mass. 220.

96 13 Mass. 223.

97 12 How. 256, 257.

98 137 Mass. 30.

99 See Learned v. Cutler, 18 Pick. 9.

WEEKLY DIGEST OF RECENT CASES.

1. BASTARDY PROCEEDING. [*Whether Civil or Criminal.*] *Trial in Absence of Accused not Error.*—A bastardy proceeding is so far a civil proceeding, that it may be tried in the absence of the accused, where he has given a recognizance and failed to appear. [In giving the opinion of the court, so holding, the following language is used by Taylor, J.: "It is insisted by the learned counsel for the plaintiff in error that a proceeding under the bastardy act is so far of a criminal character that the rules regulating the trial of criminal actions must in all cases be applied to it, and that it cannot therefore be tried without his presence in court, either in person or by attorney. We think the learned counsel is incorrect in this broad statement of the nature of the proceeding. It is true the statute requires the proceeding to be carried on in the name of the State on the complaint of the mother of the child,—or, if she fails to prosecute, then on the complaint of the supervisors of the proper town or the proper officers of the county,—still the whole purpose of the proceeding is to require him to furnish proper support for his child, and is not in any respect an attempt to punish him for any crime. It is in its nature the same as a proceeding against the father of a legitimate child under the provisions of § 1506, Rev. St., to compel him to provide for the support of his legitimate children. This court has said that these proceedings were not a civil action within the meaning of § 3039 Rev. St., giving the right of appeal to this court, (State v. Mushied, 12 Wis. 561; State v. Jager, 19 Wis. 235;) and have also held that the same rule as to evidence ought to apply to a trial of the issue as in criminal actions. Baker v. State, 47 Wis. 111; S. C., 2 N.W. Rep. 110. On the other hand, this court has held that a bastardy case cannot be certified to this court upon exceptions, as provided for in the trial of purely criminal cases, under § 4720, Rev. St. State v. Jager, *supra*. In that case the court say: 'It is not the object of the statute to punish the father as for the commission of a criminal offense, and therefore there is not, properly speaking, any 'sentence,' as upon a conviction for a crime. But the statute was intended to enforce the natural obligation which the parent is under to support and provide for his offspring, legitimate or illegitimate, (Duffies v. State, 7 Wis. 672), and not to punish for an offense against good morals and common decency.' The following cases show that this court has not treated the proceedings as of a strictly criminal nature, and have applied to it the rules governing the trial of civil rather than criminal actions.

Rindskopf v. State, 34 Wis. 217; Jerdee v. State, 36 Wis. 170; State v. Homey, 44 Wis. 615; Zweifel v. State, 27 Wis. 396; Baker v. State, 56 Wis. 568; S. C., 14 N. W. Rep. 718. It is very clear that the proceeding is not within §§ 7 and 8 of article 1 of the Constitution of this State. It is neither a criminal prosecution, an indictment, or information, within the meaning of said sections. After the accused has given a recognizance for his appearance in the circuit court to stand trial there, the justice loses all jurisdiction of the case, and it is treated for all purposes as an action in the circuit court, (Getzlaff v. Seliger, 43 Wis. 297;) and thereafter the circuit court has jurisdiction of both the person of the accused and of the subject-matter of the proceeding, and must proceed to dispose of the case. There is no provision in the statute giving the circuit court any power to arrest the accused, and bring him into court for trial; but there is a provision for arresting him after judgment, and committing him to jail if he declines or refuses to give a new bond for the payment of the sums adjudged against him. If the court cannot proceed to try the action without the presence of the accused after his giving the required recognizance, the statute not having provided any way of enforcing his attendance, there would seem to be an entire failure of the remedy so far as the mother of the child is concerned, although the State might recover upon the recognizance. It is at least doubtful whether the money so recovered could be applied to the support of the child, or for the lying-in expenses of the mother. The accused having given his recognizance for his appearance in the circuit court, confers full jurisdiction on that court; and, if he does not appear, he waives the right to appear, and the circuit court can proceed with the trial of the case. This works no hardship on the accused. If there is some good excuse for his failure to appear, the court, on proper application, would undoubtedly set aside the judgment, and give him a new trial; and if there be no excuse for his non-appearance, what reason has he to complain because the court proceeds with the case in his absence? We think there was no error in proceeding with the trial of the case in the absence of the accused."] *Baker v. State*, S. C. Wis., Dec. 22, 1885; 26 N. W. Repr. 167.

2. CONTRACT. [*Guaranty.*]—*When a Guaranty Remains a Mere Proposition, and not a Contract.*—When a guaranty is signed by the guarantor without any previous request of the other party, and in his absence, for no consideration moving between them, except future advances to be made to the principal debtor, the guaranty is, in legal effect, an offer or proposal on the part of the guarantor needing an acceptance by the other party to complete the contract. [In the opinion of the court by Mr. Justice Gray, it is said: "The decision of this case depends upon the application of the rules of law stated in the opinion in the recent case of Davis v. Wells, 104 U. S. 159, in which the earlier decisions of this court upon the subject are reviewed. Those rules may be summed up as follows: A contract of guaranty, like every other contract, can only be made by the mutual assent of the parties. If the guaranty is signed by the guarantor at the request of the other party, or if the latter's agreement to accept, is contemporaneous with the guaranty, or if the receipt from him of a valuable consideration, however small, is acknowledged in the guaranty, the mutual assent is proved, and the delivery of the guaranty to him or for his use completes the contract. But if the guaranty is signed by the guarantor without any previous request of the other party, and in his absence, for no consideration moving between them except future advances to be made to the principal debtor, the guaranty is in legal effect an offer or proposal on the part of the guarantor, needing an acceptance by the other party to complete the contract."] *Davis S. M. Co. v. Richards*, S. C. U. S., Dec. 7, 1885; 6 Sup. Ct. Repr. 173.

3. CREDITOR'S BILL.—*When it lies before Exhausting Remedy at law.*—Where a judgment debtor fraudulently conveys his real estate in order to hinder and delay the judgment creditor in the collection of his judgment, the latter may proceed at once to have such conveyance set aside, and the land subjected to the payment of his judgment, although he has not completely exhausted his remedy at law. [In the opinion of the court by Thayer, J., it is said: "The appellant's counsel, however, insists that the respondent should, before coming into equity, have exhausted its remedy at law completely; that no steps are shown to have been taken to collect the justice's court judgment of said James Poole, and that it should not have relief herein until that had been done. If the suit had been to reach equitable assets belonging to the judgment debtors there would be much force in the counsel's position. In such a case equity will not interfere until the ordinary means allowed by law to enforce a collection of the debt have been exhausted. But that is not the rule where the debtor has interposed an inequitable obstacle to the collection of the debt. When the debtor has clouded the title to real property by an incumbrance or fraudulent transfer of it, the judgment creditor may proceed at once to have it removed. He obtains a lien upon the land when he recovers his judgment, and he has the right to stop there and proceed to have the title freed from its obscurity. The suit in that case is to aid his remedy at law, and he is not required even to issue an execution. 3 Pomeroy's Eq. Jur., § 1415, note 4; Mohawk Bank v. Atwater, 2 Paige Ch. 54; Parshall v. Tilou, 13 How. Pr. 7."] *Multonomah Street R. Co. v. Harris*, S. C. Or., Jan. 14, 1886; 9 West Coast Repr. 182.

4. EQUITY JURISDICTION. [*Taxation.*] *Equity has no Jurisdiction to Levy and Collect Taxes.*—1. The proposition that the levy and collection of taxes, though they are to be raised for the satisfaction of judgments against counties or towns, is not within the jurisdiction of a court of equity, reviewed and reaffirmed. 2. The fact that the remedy at law by *mandamus* has proved ineffectual, and that no officers can be found to perform the duty of levying and collecting taxes, is no sufficient ground of equity jurisdiction. 3. The principle is the same where the proper officers of the county or town have levied the tax, and no one can be found to accept the office of collector of taxes. This gives no jurisdiction to a court of equity to fill that office or to appoint a receiver to perform its functions. 4. The inadequacy of the remedy at law, which sometimes justifies the interference of a court of equity, does not consist merely in its failure to produce the money, a misfortune often attendant upon all remedies, but that in its nature or character it is not fitted or adapted to the end in view; for, in this sense, the remedy at law is adequate, as much so, at least, as any remedy which chancery can give. [Harlan, J., dissented.] *Thompson v. Allen Co.*, S. C. U. S., Nov. 23, 1885; 6 Sup. Ct. Repr. 140.

5. ESTATES OF DECEASED PERSONS—*Validity of Agreement to Pay Claim not Presented for Allowance.*—An administrator of the estate of a deceased person, who has voluntarily paid a claim against the estate which had never been presented for allowance cannot recover back the money so paid. And an assignment by such administrator to the creditor of a leasehold interest in land, with power given to the latter to pay such unpresented claim out of the rents of the premises assigned, is not void between the parties thereto, and may be enforced by the administrator. [In the opinion of the court by Leonard, J., it is said: "This is not a case of payment of a claim that was not legally exigible. It was due from the Adams' estate to defendant, although no action could have been maintained thereon without due presentment to the administratrix and the judge; and the payment made, albeit in an irregular manner, released the estate from a legal charge. It is not a case of money paid by mistake of fact, or by reason of fraud." The learned judge refers in argument to the following cases: Herson v. Marshall, 5 Humph. 443; Sloan v. Stevenson, 24 La. An. 278; Egbert v. Rush, 7 Ind. 707; Walker v. Hein, 17 Mass. 383; Pistole v. Street, 5 Port. 64; Parker v. Hall, 2 Head, 645; Stromach v. Stromach, 20 Wis. 133; Succession of Marr, 23 La. Ann. 718; Miller v. Harrison, 34 N. J. Eq. 374; Haile, Adm'r, v. McGee, 29 La. Ann. 350; Succession of Margaret McAuley, Id. 38; Cook v. City of Boston, 9 Allen, 393; Benson v. Monroe, 7 Cush. 125; Patterson v. Cox, 25 Id. 261; Williams v. Colby, 44 Vt. 41; Awalt v. Eutaw B. Ass'n, 34 Md. 435.] *Adams v. Smith*, S. C. Nev., Jan. 20, 1886; 9 West Coast Repr. 103.

6. EVIDENCE. [*Foreign Record—Authentication.*] *Certificate of Judge, when Sufficient under Act of Congress.*—Where a judge, in his certificate of attestation to the record of a foreign judgment, describes himself as judge of the court, it is a sufficient authentication, under the act of congress, unless it affirmatively appears from an inspection of the record that the court was composed of more than one judge or magistrate. [Citing and examining Central Bank v. Veasey, 14 Ark. 672; Butler v. Owen, 7 Id. 369; Low v. Burrows, 12 Cal. 181; Pratt v. King, 1 Or. 50; Bennett v. Bennett, 1 Deady, 299; Van Storch v. Van Storch, 71 Pa. St. 240.] *Keyes v. Mooney*, S. C. Or., Jan. 12, 1886; 9 West Coast Repr. 180.

7. ———. *Clerical Error in Date of Certificate.*—The fact that the judge's certificate bore a date prior to that of the attestation of the clerk will not invalidate it; when it appears that the certificate refers to the transcript and attestation as being then in existence.—*Ibid.*

8. LIBEL. [*Privileged Communication.*] *Communication made in Performance of a Social Duty.*—The defendant, the manager of a business of which A. was owner, at the request of B., wrote down and signed as a witness a confession wherein B. declared himself guilty of having robbed A., his late employer, and implicated the plaintiff, who had been discharged from the service of A. three weeks before, as having shared with him (B.) in the proceeds of the theft. There were present, when the document was written, B., A., the defendant, the defendant's wife, and one C., a person also in the employ of A. The plaintiff brought an action for damages for libel against the defendant, which was tried in the county court, where he recovered a verdict and £10 damages. *Held*, (reversing the decision of the county court judge), that the defendant had acted in performance of a social duty, and that there being no inference of malice, the communication was privileged by reason of the occasion being privileged. *Held* also, that the fact of the defendant's wife and C. being present did not divest the occasion of being privileged. *Jones v. Thomas*, Eng. Q.B. Div., Nov. 18, 1885, before Pollack, B., and Manisty, J.; 53 Law Times Reps. (N. S.) 678.

9. MUNICIPAL CORPORATION. [*Powers of Devise.*] *May take Devise of Land to Develop Coal Mine.*—A city may receive property, real and personal, by devise and bequest, for the purpose of prospecting for and developing a coal mine at or near the city. [Citing Dill. Mun. Corp., §§ 436, 437, 438, 443.] *Delaney v. City of Salina*, S. C. Kan., Jan. 9, 1886; 9 Pac. Repr. 271.

10. ———. [*Streets.*] *Cannot grant Use of Street to Private Railroad.*—A city has no right or authority to give permission to any individual or corporation to construct or operate a purely private railroad upon the public streets of the city. All the statutes which have reference to railroad companies or others constructing or operating railroads through or upon the public streets of a city simply have reference to such railroad companies or others as perform the duties of common or public carriers, and to such railroads as are public or *quasi* public in their character. *Mikesell v. Durkee*, S. C. Kan. Jan. 9, 1886; 9 Pac. Repr. 278.

11. ———. [*Abutting Land-owner—Injunction.*] *Injunction against such Nuisance at Suit of abutting Land-owner.*—Where a person or corporation attempts to construct a purely private railroad upon any of the public streets of a city, any abutting lot-owner whose property is or may be injured thereby may maintain an action to pepetually enjoin such person or corporation from making such use of the streets. [Citing: Milhau v. Sharp, 27 N. Y. 611; White v. Flannigain, 1 Md. 525; s. c. 54 Amer. Dec. 668; Ewell v. Greenwood, 26 Iowa, 377; Wilson v. City of Mineral Point, 39 Wis. 160.] —*Ibid.*

12. PATENTS FOR INVENTIONS.—*Application of Old Process to Analogous Subject not Patentable.*—The application of an old process or machine to a similar or analogous subject, with no change in the manner of applying it, and no result substantially distinct in its nature, will not sustain a patent, even if the new form of result has not before been contemplated. *Miller v. Foree*, S. C. U. S., Dec. 14, 1885; 6 Sup. Ct. Repr. 204; affirming s. c. 9 Fed. Repr. 603.

13. STATUTE OF LIMITATIONS. [*Fraud—Concealment — Pleading.*] *Allegations of Fraudulent Concealment Sufficient to take Case out of Statute of Limitations.*—Allegations in a petition that the fraudulent transactions were studiously concealed from plaintiff and his assignor, and he and his assignor had no means of discovering the same, and did not know thereof until they were disclosed in the examination of a witness in a suit on a day named in the petition, are sufficient to take the case from the operation of the statute. [The court cite: Bailey v. Glover, 21 Wall. 342; Rosenthal v. Walker, 111 U. S. 185; s. c. 4 Sup. Ct. Repr. 382; and distinguish Wood v. Carpenter, 101 U. S. 135. *Traer v. Clews*, S. C. U. S., Nov. 23, 1885: 6 Sup. Ct. Repr. 155.

QUERIES AND ANSWERS.*

[Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.]

QUERIES.

23. A COMPLICATION ABOUT A MORTGAGE. — A. makes a mortgage to B. to secure the payment of three notes, falling due in one, two and three years. B. sells the first note to become due to C., endorsing it. C. forecloses her mortgage and sells the property on her decree—purchasing at the full amount of her judgment, and receipts the judgment as satisfied by the purchase of said property. It afterwards turns out that A. had given a mortgage to D. which was older than the mortgage to B. D. forecloses his mortgage and takes the property away from C. Can C. have the satisfaction of her judgment set aside and go back upon B., the endorser of the note for her money?

Logansport, Ind. F. S.

24. WANTS INFORMATION.—First Nat. Bank of Xenia v. Stewart.—I clip the following from the *St. Louis Republican*: "A decision of interest to banks and bank stockholders was rendered in the case of the First National Bank of Xenia, Ohio, plaintiff in error, against Daniel M. Stewart and Martha N. McMillan, administrators. This was a suit brought against the bank by the administrators of one McMillan on account of the alleged appropriation and sale by the bank of certain shares of its own stock, which belonged to McMillan, but which were in the bank's custody. The bank justified its action upon the ground that McMillan was its debtor to an amount of greater value than the stock, and that the stock was put in its hands as collateral for the indebtedness. This court holds that the verdict of the jury in the trial below legally established the fact that the bank did not hold the stock in question as security for McMillan's indebtedness. 'The contention of the bank, therefore,' the court says, 'comes to this: that a creditor who has possession of the property of his debtor as his agent, trustee or bailee, may without reducing his debt to judgment, and without process or order from any court and without consent and against the will of the debtor, sell or otherwise dispose of the property and apply its proceeds to the payment of his debt. We do not think the law gives the creditor any such right.' The judgment of the court below in favor of McMillan's administrators is affirmed." Will some of your readers tell me what court decided this case and when? M.

[Will some of our subscribers in Xenia, Ohio, answer this question?—ED. CENT. L. J.]

CORRESPONDENCE.

ADDENDA TO THE "THANKSGIVING OFFERING."

To the Editor of the Central Law Journal:

APPEARS FOR US AND FOR THE UNDER DOG.—It is very seldom that I find anything in the JOURNAL which I cannot heartily endorse, and, like many others, I say, "Keep on just as you are; pay no attention to the growlers." But when you arraign my friend the dog (the thoroughbred, not the "*yaller* dog") I must ask leave to appear for the defendant.

Pine Bluff, Ark. A. B. GRACE.

NOT GOING TO TELL US HOW TO PLAY EDITOR.—"Am thoroughly pleased with your publication *as it is*, and see no change which could render it more readable or profitable. I am not so egotistical as to imagine that I can edit a better law journal than yours, and therefore, shall not follow the example of so many of your subscribers in offering suggestions. Should be glad to see a leading article on the rights and personal liability of Bank Directors similar to the one which appeared some time ago on Bank Cashiers."

Cincinnati, O. HENRY M. MORRIS.

[We will have it done; and when any other subscriber wants an article written on a live topic, if he will suggest the topic, we will have it written. That is what we are here for—to help those who help us.—ED. C. L. J.]

WILLING TO STAND UPON THE ANCIENT WAYS.—The many opinions that have been given as to proper matter for your law journal show that you satisfy the demands and wants of the great majority of your readers, and that you know what the lawyers desire in such a publication. Lest so good a thing be marred by changes wrought upon suggestions, I make none, being willing to stand upon the ancient ways.

Salina, Kan. T. F. GARVER.

JETSAM AND FLOTSAM.

QUEER LAW SUIT—BEES V. SHEEP.—A novel suit has just been terminated in the Richland County (Wis.) Circuit Court, by the dismissal of the complaint at the hands of his honor, Judge William Clementson. The plaintiff, J. H. Powers, of Ithica, that State, is the owner of a large sheep ranch in Richland county, adjoining the land of the defendant, Freeborn, a prominent bee-keeper. The suit was for $1,000 damages, the complainant alleging that many of his sheep had died, and that the "poor, weak and feeble condition of the remainder of the flock" was due entirely to the swarms of defendant's bees, which invaded his (plaintiff's) land and drove his sheep from their pasturage. An array of eminent counsel was assembled on either side, and Wisconsin and Illinois bee-keepers, representing from 18,000 to 20,000 colonies of bees, were present in court to watch the progress of the suit. This case was summarily dismissed by his honor, on the grounds of lacks of precedent for the proceedings, and damages of so remote a nature they could not be entertained.—*Chicago Legal News.*

LORD COLERIDGE AND THE PRESS.—The following story recently came from London in a cable dispatch to the *New York Times*: "Justice Cave has cut Lord Chief Justice Coleridge. It is a curious story. Two days before Lord Coleridge's marriage his intended bride called on Edmund Yates, told him the news and begged him not to attack the marriage. Yates said he had no intention of doing so. The next day he got a long letter from Lord Coleridge effusively thanking him for his promise and then referring to Yates' heavy sentence at his hands, saying that he really wished otherwise, but there was such a tremendous pressure on the part of the other justices that he could not withstand it. Yates has had this letter lithographed and has circulated twenty copies. As a matter of fact Justice Cave and the other justices were for leniency to Yates and Lord Coleridge insisted on severity."